



ROCHDALE
METROPOLITAN BOROUGH
COUNCIL

HR Policies & Procedures

DISCIPLINARY PROCEDURE

Policy/Procedure Author:

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DISCIPLINARY PROCEDURE FOR ALL EMPLOYEES OF THE COUNCIL
(Except Teachers and certain support staff in Locally Managed Community, Controlled, Voluntary Aided and Foundation Schools and employees graded in accordance with the Chief Executive, Chief Officer and Assistant Chief Officer Pay Bands)

1. INTRODUCTION

- 1.1 The Council and the recognised trade unions have agreed the following procedure to deal with disciplinary matters. In order to ensure that the procedure is fair and effective it will be applied in all instances where disciplinary action is regarded as warranted, other than where an informal warning is given for some relatively minor act of misconduct.
- 1.2 It is recognised that the disciplinary procedure should not be viewed primarily as a means of imposing sanctions. It is also intended that improvement in individual conduct should be emphasised and encouraged.
- 1.3 This procedure applies to all employees of the Council including staff within the School Support Services, Non-Delegated Schools and the School Meals Service in Locally Managed Community, Controlled and Voluntary Aided Schools. It does not pertain to Teachers and other support staff in Locally Managed Community, Controlled, Voluntary Aided and Foundation Schools and employees graded in accordance with the Chief Executive, Chief Officer and Assistant Chief Officer Pay Bands.
- 1.4 The procedure does not apply to:-
- (a) resignation of the employee, or other termination by mutual consent;
 - (b) termination of a fixed-term contract of employment where the term of that contract expires without being renewed;
 - (c) termination of a temporary appointment where the reason for termination is that the need for the employee's service has expired, or is about to expire;
 - (d) incompetence, incapability or other poor performance at work which is considered not to be attributable to a wilful disinclination by the employee to carry out his/her duties efficiently or effectively, but which is thought to be attributable to a lack of skill or aptitude. A separate procedure exists to deal with such issues;
 - (e) termination of employment by reason of redundancy;

2. RESPONSIBILITY FOR DISCIPLINE

- 2.1 The Service Director has overall responsibility for discipline among employees in each Service. Each Service Director shall after consultation with service union representatives prepare a scheme setting out the levels of management responsibility for taking different forms of formal disciplinary action including the authority to suspend an employee from duty. It should be noted that only Service Directors and Executive Directors have the authority to dismiss an employee.

3. INVESTIGATION

- 3.1 Where a matter arises which is suspected or believed to contravene a disciplinary rule or may otherwise be a disciplinary matter, an appropriate officer will investigate it promptly and adequately.

- 3.2 An employee against whom allegations of misconduct have been made is entitled to be represented by a trade union representative or a fellow Council employee, but by no-one else, during any interviews conducted as part of the investigation.

4. SUSPENSION

- 4.1 If the matter to be investigated is thought to involve serious misconduct or that it will not be practical to carry out an investigation into the circumstances of the alleged misconduct while the employee remains on duty, the employee may be immediately suspended from duty on full pay while the investigation proceeds. Similarly, if during the course of an investigation it is considered that a serious breach of discipline may have occurred, the employee may be suspended from duty on full pay. Any decision to suspend must be made by an officer authorised to take such action (see paragraph 2.1 of this procedure) and confirmed in writing as soon as reasonably practical. This will be a precautionary, not a disciplinary, suspension pending the outcome of the matter.

5. THE PROCEDURE

- 5.1 If, on completion of the investigation, it is considered by the investigating officer that, on the balance of probabilities, a complaint of misconduct is justified but, requires action short of dismissal, a disciplinary hearing before an authorised officer (see paragraph 5 of this procedure) will be arranged. The hearing will be conducted in accordance with the provisions set out in Appendix A of this procedure.
- 5.2 Alternatively, if the investigating officer considers that the disciplinary issue may result in dismissal, or the employee is already under a final written warning which is in force, then, a disciplinary hearing before the Service Director must be arranged. The hearing will be conducted in accordance with the provisions set out in Appendix A of this procedure.

6. DISCIPLINARY ACTION

- 6.1 In cases, other than those involving gross misconduct, where misconduct is alleged and is established on the balance of probabilities, the under-mentioned disciplinary action may be taken when the procedures set out in paragraphs 5.1 & 5.2 above (as appropriate) have been followed:-
- (a) For a minor offence or offences, a formal oral warning making it clear that further misconduct will render the employee liable to further disciplinary action involving more serious consequences.
 - (b) For a more serious offence, or the commission of a lesser offence after a formal oral warning has previously been given and remains in force, a written warning setting out the nature of the offence and informing the employee that further misconduct is liable to result in further disciplinary action under this procedure.
 - (c) For an offence involving serious misconduct, or for an offence after a written warning has been given and remains in force, a final (or combined first and final) written warning setting out the nature of the offence and informing the employee that further misconduct would render him/her liable to further action under this procedure and could result in dismissal.
 - (d) For an act or acts of further misconduct, other than gross misconduct, by an employee who is under a final warning given in accordance with (c) above, the employee will be liable to dismissal with pay in lieu of notice.
- 6.2 In cases where gross misconduct is alleged and is established on the balance of probabilities, the employee will be liable to summary dismissal when the procedure set out above has been followed.

- 6.3 Gross misconduct is regarded as misconduct of such a nature that it fundamentally breaches the contractual relationship between the employee and the Council and justifies the Council in no longer accepting the continued presence of the employee at the place of work. These include stealing from the Council, other offences of dishonesty, sexual misconduct at work, fighting, physical assault, deliberate damage to or misuse of the Council's property, drunkenness or being under the influence of drugs at work, falsification of records or claims for personal gain. This list is neither exclusive nor exhaustive. Other acts of misconduct may come within the general definition of gross misconduct.
- 6.4 In cases where the police are investigating a matter or a court case is pending, the application of the disciplinary procedure does not have to await the outcome of such external investigations or proceedings.

7. TIME LIMITS FOR DISCIPLINARY WARNINGS

- 7.1 All formal warnings, and including in the case of a further warning all earlier warnings, shall be disregarded for the purposes of this procedure and record of it removed from the employee's disciplinary record after twelve months' satisfactory conduct following the date on which the warning was given. Conduct will not be deemed to be satisfactory if, as a result of an act of misconduct committed during the one-year period, further disciplinary action is taken against the employee.

8. RECORDS OF DISCIPLINARY ACTION

- 8.1 All disciplinary records shall be carefully safeguarded and kept confidential under the immediate control of the Service Director or senior officer specifically designated by him/her. An employee may see his/her disciplinary record at any time if he/she so requests.

9. APPEALS

- 9.1 An employee who wishes to appeal against any form of formal disciplinary action taken against him/her under this procedure must do so within ten working days of receipt of the letter notifying the disciplinary action taken. The appeal should be made, in writing, to the Chief Executive, who will arrange for a meeting of the Appeals Committee to be held. The appeal will be conducted in accordance with the provisions set out in Appendix B of this procedure.

10. TRADE UNION REPRESENTATIVES

- 10.1 Where an alleged act of misconduct is believed to have been committed by an employee who is an accredited representative of a trade union recognised by the Council for collective bargaining purposes, no action under the procedure, other than precautionary suspension when serious misconduct is being investigated, will be taken until the case has been discussed with a local secretary of that union. If a local secretary is the subject of the disciplinary issue, the matter will be discussed with a full time official of that union.

11. MISCELLANEOUS

- 11.1 Nothing in this procedure is intended to remove the right of an appropriate officer to give an employee an informal warning when the employee is believed to have committed a minor infringement of the established standards of conduct. The object of any such informal warning is the improvement of future conduct and it is not intended that it should form part of the formal disciplinary procedure. There is no limit on the number of informal warnings that may be given, but it is advisable that where the employee's conduct or failure may lead to formal disciplinary action this should be made clear to him/her.

12. MONITORING

12.1 The HR Service will be responsible for monitoring and administering the procedure which will be reviewed regularly in light of any legislative or case law changes.

13. EQUALITY AND DIVERSITY CONSIDERATIONS

13.1 Service Directors and employees are responsible for ensuring that they operate the procedure in line with the Council's Equality and Diversity policy to provide equality of opportunity for all employees.

13.2 The Council is committed to ensuring that no-one is discriminated against, disadvantaged or given preference, through membership of any particular group, particularly based on age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity. This procedure will be applied equally to all employees irrespective of their background or membership of a particular group.

13.3 The application of this policy and procedure will be subject to an equality impact assessment to ensure that it does not discriminate either positively or negatively in relation to the above groups either directly or indirectly. The Council will regularly review this policy's impact on any equality and diversity issues, and will identify any inequalities by monitoring and will take appropriate action where necessary.

APPENDIX A

DISCIPLINARY HEARING CONDUCTED BY AUTHORISED OFFICER

1. The employee will be given a minimum of 10 working days' advanced notice of the hearing; informed, by the investigating officer, in writing, of the purpose of it, with the nature of the misconduct alleged being set out; be supplied with a list of witnesses it is intended to call and copies of any documents to which it is intended to refer; and be advised of the right to be accompanied by a trade union representative or a fellow Council employee of his/her choice, if he/she wishes, but by no-one else. This information shall also be sent to the officer authorised to conduct the hearing.
2. The employee (or his/her representative) shall send to the investigating officer and to the authorised officer copies of any documents that he/she intends to refer to at the hearing, together with a list of witnesses that he/she intends to call, not less than 5 working days in advance of the hearing.
3. The authorised officer may be accompanied by an adviser who has not had any prior involvement in the matter.
4. The under-mentioned procedure will be followed at the disciplinary hearing:-
 - (i) Investigating officer to put the case and to call witnesses.
 - (ii) Employee (or his/her representative) to ask questions of the investigating officer and witnesses.
 - (iii) Authorised officer to ask questions of the investigating officer and witnesses.
 - (iv) Employee (or his/her representative) to put his/her case and to call witnesses.
 - (v) Investigating officer to ask questions of employee (and/or his/her representative) and witnesses.
 - (vi) Authorised officer to ask questions of the employee (and /or his/her representative) and witnesses.
 - (vii) Investigating officer to sum up.
 - (viii) Employee (or his/her representative) to sum up.
5. The officer conducting the hearing may adjourn the proceedings at any stage if this appears necessary or desirable. If adjourning for the purpose of enabling further information to be obtained he/she will specify the nature of that information. Any adjournment will normally be for a stated period.
6. Following the summing up, both parties, together with their representatives and any witnesses called, will withdraw. If it is necessary to recall one of the parties for further information before a decision is taken both parties shall be recalled. If an adviser attends the hearing he/she may remain during the consideration of the decision.
7. On completion of his/her deliberations the authorised officer will normally announce his/her decision and the disciplinary action, if any, to be taken. He/she will also give an explanation for that action and, where appropriate, will explain the employee's right of appeal under this procedure.
8. If the employee is exonerated all reference to the matter shall be removed from the employee's disciplinary record and the employee notified accordingly.
9. The decision of the authorised officer will be confirmed to all parties in writing. Where the decision is to impose a disciplinary sanction, the letter will also set out the employee's right of appeal against that disciplinary action.

APPENDIX B

**DISCIPLINARY APPEAL CONDUCTED BY THE DISCIPLINARY APPEALS
COMMITTEE**

1. The Appeals Committee shall consist of three Members.
2. Details in relation to the appeal will be given to the Appeals Committee 5 days prior to the hearing.
3. The employee will be given a minimum of 10 working days' notice of the appeal hearing. He/she will be advised of the right to be accompanied by a trade union representative or a Council employee of his/her choice if he/she wishes, but by no-one else.
4. Copies of all documents to be referred to at the hearing and a list of witnesses to be called will be submitted by both parties to the Committee 5 days prior to the meeting.
5. The Appeals Committee shall have an advisor who has had no prior involvement in the case.
6. The under-mentioned procedure will be followed at the appeal hearing.
 - (i) Executive Director/Service Director (or his/her representative) to put the case and call witnesses.
 - (ii) Employee (or his/her representative) to ask questions of Executive Director/Service Director (and/or his/her representative) and witnesses.
 - (iii) Members of Appeals Committee to ask questions of the Executive Director/Service Director (and/or his/her representative) and witnesses.
 - (iv) Employee (or his/her representative) to put his/her case and to call witnesses.
 - (v) Executive Director/Service Director (or his/her representative) to ask questions of the employee (and/or his/her representative) and witnesses.
 - (vi) Members of the Appeals Committee to ask questions of the employee and/or his/her representative and witnesses.
 - (vii) Executive Director/Service Director (or his/her representative) to sum up.
 - (viii) Employee (or his/her representative) to sum up.
7. The Chairman may adjourn the proceedings at any stage if this appears necessary or desirable. If adjourning for the purpose of enabling further information to be obtained, he/she will specify the nature of that information. Any adjournment will normally be for a stated period.
8. Following the summing up, both parties together with their representatives and any witnesses called, will withdraw. If it is necessary to recall one of the parties for further information before a decision is taken, both parties shall be recalled. The advisor to the Appeals Committee shall remain during the Sub-Committee's deliberations.
9. On completion of the Appeals Committee's deliberations, the Chairman will normally announce the decision. The Committee may allow or disallow, or partially allow the appeal. If the decision is to partially allow the appeal, the Committee may substitute a lesser form of disciplinary action in accordance with the provisions of the procedure. In the event of an appeal being allowed,

without qualification, all reference to the matter shall be removed from the employee's disciplinary record and the employee notified accordingly.

10. The decision of the Appeals Committee will be confirmed to all parties in writing. No further right of appeal will be available to the employee within the Council.