



# Discipline Policy

## 1. Introduction & Purpose

It is the policy of the Council to deal fairly and consistently with employees whose conduct does not meet the required standard. Discipline is necessary to assist the organisation to operate effectively and for the health and safety at work of all employees. The procedure is designed to ensure that acceptable standards of conduct are adhered to and to ensure that satisfactory performance standards are achieved where lapses occur.

This policy does not apply to dismissals due to redundancy or non-renewal of fixed term contracts on their expiry.

## 2 Scope

2.1 This policy applies to ALL staff employed by Stafford Borough Council with the exception of:-

- The Chief Executive for whom legislative procedures already exist under the Local Authorities (Standing Orders) Regulations 1993 and JNC for Chief Executives of Local Authorities
- Directors and Heads of Service (whose disciplinary procedure is contained in the JNC conditions of service booklet)

2.2 The procedure forms part of National and Local conditions of Service for all employees of the Council (except those listed above) and supersedes all previous disciplinary procedures and practices.

## 3 General

3.1 Every manager is responsible for ensuring that workplace rules and standards of conduct are clearly known, understood and followed by all employees. In addition each manager is responsible for maintaining satisfactory performance standards from staff they supervise.

3.2 Where there is misconduct or poor performance prompt management action should be taken to encourage and enable the employee to improve. At every stage the purpose of management action including the use of the formal discipline procedure is corrective action rather than punishment. The intention is always to give an employee the opportunity and support to improve. The exception to this is where the issue is one of 'gross misconduct' (see section 8).

3.3 The aim is to deal with problems of conduct as early and informally as possible. This should be seen as part of the normal responsibilities of management and supervision with care being taken to ensure that reasonable standards of privacy and confidentiality are maintained. It should be approached jointly with the employee (and representative as appropriate), as the employee will need to explain his/her own perception of the problem and contribute to the solution. Where improvement is required it is important that

the employee understands what needs to be done, how performance or conduct will be reviewed and over what period.

- 3.4 The formal discipline procedure should be used when, even after appropriate management action, the misconduct or unsatisfactory standards of behaviour persists, or where, because of the nature of the actions, the situation is likely to require a formal warning or more serious disciplinary action. In all circumstances where formal disciplinary action is being considered, the manager involved will need to consult with Human Resources.
- 3.5 If the allegation of misconduct involves financial irregularity at any level the Head of Human Resources and the S151 Officer should be consulted immediately.
- 3.6 No formal disciplinary action, including dismissal will be taken against an employee until after the matter has been properly investigated and a disciplinary hearing has taken place.
- 3.7 Disciplinary hearings will be conducted in accordance with the procedure set out below, which will be applied consistently throughout the organisation.
- 3.8 Disciplinary action may only be taken by Officers at the appropriate level and should be discussed with a member of the Human Resource team in the first instance.
- 3.9 Except in cases of gross misconduct, no employee will be dismissed for a first breach of discipline.
- 3.10 Officers of the Human Resources Team will attend all disciplinary hearings to advise and assist the officers' conducting the hearings or appeals against disciplinary action.
- 3.11 Different officers will be involved at different stages to ensure recognition of the principles of natural justice and to ensure non-discriminatory practice.
- 3.12 If at any time it is not possible to hold the disciplinary hearing within the set time frame, there may be occasions when Stafford Borough Council and the employee agree that the time limits should be extended.
- 3.13 If due to disability, or special circumstances, an employee requires support when preparing for their disciplinary hearing, he/she should contact their local Trade Union representative or a member of the Human Resources team.

#### **4. Achieving Improvement**

##### *Informal Action: Guidance and/or Counselling*

- 4.1 Counselling is a discussion between an employee and the manager in which the relevant issues are identified and an action plan is agreed to help the employee improve.

- 4.2 In some situations, providing guidance and counselling on this informal basis, can be a more appropriate method of resolving issues. It is also an attempt to correct a situation before a disciplinary hearing becomes necessary.
- 4.3 During the discussion, if it becomes clear that further remedial action will be required to correct shortcomings in the employee's performance, the manager should consider whether or not the case would be more appropriately pursued via the Council's Capability Procedure. Advice should be sought from a member of the HR team in these circumstances.

#### *Meeting Approach*

- 4.4 All staff should be treated fairly and consistently. Issues of misconduct should be dealt with as soon as they arise, especially if they are serious and require urgent action.

When dealing with **misconduct**, the manager should:

- Set the standard of expected behaviour and conduct required
- Set out the consequences of any further proven misconduct (eg formal disciplinary action)
- Set a reasonable period for the employee to demonstrate good conduct or proper behaviour
- Monitor continuously and give feedback to the staff member

For information, Appendix 1 details examples of misconduct.

- 4.5 It is essential to keep a record of actions taken at all times. When taking early informal management action, the manager should keep brief notes, including any agreed actions. Should the problems continue and move on to the formal Disciplinary Procedure these notes or records will be important evidence of the problem and attempts to deal with it. Although the employee should be made aware that brief notes have been taken, they must also be advised that these are for the manager's record only at this stage. Additionally, the employee should also be advised that the notes are to be kept confidential.
- 4.6 Although the informal process is not part of the disciplinary procedure, it is part of the employee's employment history and can set the scene for future disciplinary action if further incidents occur.

## **5. Formal Discipline Procedure & Investigation**

- 5.1 If the problem has not been resolved by appropriate management action and informal counselling methods, or managers are faced with a more serious problem, the formal procedure should be used. It is essential that this

procedure is carefully followed. Failure to follow the procedure may jeopardise the action taken and consequently create additional management problems. It must be remembered that employees have a right of appeal whenever the formal disciplinary procedure is invoked.

5.1.1 The formal procedure starts with investigation into the allegation(s).

5.1.2 It should be remembered that the primary aim of any formal disciplinary procedure is to correct misconduct or improve standards or performance in the workplace.

## 5.2 *Investigation (Establish the Facts of the Case (ACAS))*

5.2.1 Whether or not a suspension is applicable should be agreed with the Head of Service in conjunction with the Head of Human Resources. If no suspension is necessary the Investigating Officer should proceed with the investigation whilst the employee continues at work. However, the employee may be assigned to other temporary duties pending the investigation if it is felt appropriate.

5.2.2 The aim of an investigation is to establish whether disciplinary action is justified. It should be undertaken as swiftly, discreetly and as fully as possible and include the following:

- An agreed estimate of the length of time of the investigation
- Exploring the circumstances surrounding the suspected or alleged offence
- Verifying the facts, eg exactly how many times has the employee been late and over what period, including any written documentation
- Interviewing any relevant and appropriate witnesses there may be eg, who saw the fight, heard the comments.
- Obtaining signed and agreed statements from all witnesses
- Following up on any gaps in the evidence and if necessary re-interviewing to witnesses to clarify facts
- Ensuring that all individuals interviewed are offered the opportunity to have a trade union representative or colleague present when interviewed
- The employee is fully aware of what he/she is accused of and is given an opportunity to offer an explanation

5.2.3 According to the 2003 ACAS guidelines on Disciplinary Procedures the following are deemed to be important in taking statements:

- Date, time and place of each or any observation or incident

- The opportunity and ability to observe clearly and with accuracy
- The circumstantial evidence such as knowledge of a system or arrangement, or the reason for the individual and why certain small facts are memorable
- Whether the individual has suffered at the hands of the accused or has any other reason to fabricate, whether from personal grudge or any other reason or principle
- Further investigation can then take place either to confirm or undermine the information given. Corroboration is clearly desirable

5.2.4 The officer responsible for the investigation should ensure that:

- The degree of investigation carried out is reasonable in the circumstances
- The explanation of the employee is given due weight
- He/she genuinely believes that the employee has committed the offence or is sure that he/she did not
- Has reasonable grounds to back up the belief

## **6 The Disciplinary Hearing**

6.1 In line with the ACAS code of practice, an employee will be advised in writing of the requirement to attend a disciplinary hearing. This letter will also include:

- the nature of the conduct and details of the allegation(s)
- the date, time and venue for the hearing
- the employee's right to be accompanied by a 'companion'
- the name of the Chair of the Hearing and HR representative

6.1.1 Any information to be presented at the hearing by either side should be available to all parties at least five working days in advance of the hearing.

### *6.2 Right to be Accompanied – Role of the 'Companion'*

6.2.1 In accordance with the Employment Relations Act 2002 employees have a statutory right to be accompanied by a companion throughout the disciplinary process (excluding notice of investigation). This companion will be a local trade union official and/or a work colleague. However, if the employee chooses that both attend, the role of the work colleague will be to act as a silent observer only.

- 6.2.2 If the employee chooses a companion who for example, had a conflict of interest or whose presence may prejudice the hearing, the employee would be asked to choose an alternative companion. It would also not be reasonable for an employee to ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available on site.
- 6.2.3 If the employee's chosen companion is not able to attend the date agreed for the disciplinary hearing, an alternative date should be proposed by the employee. This will usually be within 5 days of the date arranged for the original hearing. As far as reasonably possible, the location and timing of any hearing will be both convenient to employee, companion and the disciplinary panel.
- 6.2.4 The main role of the companion is to provide support to the employee. In addition, the companion will be able to confer with the employee, ask questions, sum up the employees case and participate fully in the hearing.
- 6.2.5 The companion does not have a statutory right to answer questions on the employees behalf, if the employee does not wish it.
- 6.2.6 The Council continues to recognise the advocacy role that is gained by the involvement of Trade Union Representatives in the disciplinary process.

### 6.3 *Hearing Structure*

- 6.3.1 The disciplinary hearing will be chaired by either a Head of Service or designated manager and accompanied by a member of the Human Resources team. The Investigating Officer will be required to present the case.
- 6.3.2 Following introductions, the purpose of the hearing will be outlined, namely:
- to hear evidence of the allegation(s)
  - for the employee to respond and state their case.
  - to decide if an allegation is proven; and if so,
  - to decide what sanction is appropriate
- 6.3.3 During the course of the hearing, an adjournment may be called by any of the parties involved.
- 6.3.4 Following questions, the Investigating Officer and the employee or his/her representative will be given the opportunity of summing up and addressing the panel on the facts presented in the hearing.
- 6.3.5 On completion of the hearing, the disciplinary panel hearing the case will adjourn to consider all relevant information and evidence. As soon as practically possible or within 7 working days, the disciplinary panel will reconvene the hearing and state the decision reached including any

disciplinary action or sanctions. In addition, and following the hearing a letter confirming the outcome of the hearing will include:

- confirmation of whether a disciplinary sanction is required
- the nature of the misconduct and the change in behaviour required
- the consequences should there be a failure to improve or modify behaviour
- the employees right of appeal

6.3.6 A list of the sanctions that may result from formal disciplinary action include:

- First written warning (for a minimum of 12 months duration)
- Final written warning (for a minimum of 24 months duration)
- Disciplinary suspension (up to a maximum of 4 weeks without pay)
- Demotion
- Temporary cessation of pay
- Dismissal (with notice or pay in lieu of notice)
- Any other penalty short of dismissal
- Summary dismissal (in gross misconduct cases and without notice)

6.3.7 A record of the hearing will be retained on the employees file in line with Data Protection legislation.

6.3.8 Every effort is made to arrange the timing of a hearing, such that it is suitable for all involved parties. However, it should be noted that where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause, Stafford Borough Council will have no option other than to make a decision on the evidence available.

## **7 Right of Appeal – Formal Action**

7.1 As advised within the disciplinary hearing outcome written confirmation, following a disciplinary hearing, an employee may appeal, if he or she wishes to do so. To register an appeal, the employee must inform the Head of Human Resources in writing stating the reasons for the appeal as soon as reasonably practical, or in any instance within 5 working days from receipt of the disciplinary outcome written confirmation.

7.2 The appeal will be held as quickly as practically possible; 20 working days following receipt of the appeal letter will be used as a guide for the expected timescales.

7.3 To ensure impartiality, the appeal will be heard by different parties from those previously involved in the original hearing:

- In circumstances where the employee has been given a warning up to and including a final written warning, Stafford Borough Council's Appeals Panel will hear the appeal. An appropriate Head of Service and Head of Human Resources or designated manager will form the Appeals Panel.

- In circumstances where the decision has been made to dismiss the employee, this appeal will be heard by the Employee's Appeals Committee, made up of Members of the Council.
- 7.4 Following the appeal hearing, the Head of Service / Designated Manager will provide the employee with a written decision within five working days or as soon as is practically possible.
- 7.5 This is the final stage off the discipline procedure. The decision of the Appeals Panel/Employee Appeals Committee is final.

## **8 Gross Misconduct and Suspension from Duty**

- 8.1 If the employees misconduct is believed to be of a serious nature, this is known as "gross misconduct". For examples of gross misconduct – see Appendix One.
- 8.2 When it is alleged that an act of misconduct has occurred, consideration should be given to suspending the individual concerned. Before considering this option, advice should be sought from the Head of Human Resources or his/her nominee. Alternatively it may be appropriate to consider temporary alternative duties pending the completion of the investigation.
- 8.3 There are two main considerations in taking a decision to suspend:
- Would there be any threat to staff or customers by the employee's continued presence at work
  - Would the employee's presence prevent a full investigation (could he/she influence potential witnesses or affect the evidence)
- 8.4 If the decision is taken to carry out a suspension, the points to remember are as follows:
- Wherever possible and practical the employee should be given the opportunity to be accompanied to the suspension hearing by their trade union representative or by a work colleague. If the union representative or colleague is not available, the suspension may still proceed. In all instances if the employee is a member of a recognised trade union, the appropriate trade union representative must be informed of the suspension at the earliest opportunity. A member of Human Resources should be consulted in advance and attend if required.
  - The suspension should be carried out as soon as possible. If the employee is not on duty, do not allow them to return to normal duties. If necessary call them in early or arrange to meet prior to the start of their shift. Failure to do this could adversely affect the success of the investigation.

- Explain the reasons for suspension clearly and inform the employee of the allegation(s) against them.
- Emphasise that suspension at this stage is not a sanction, but a **precautionary measure** and that during the suspension the employee will receive full basic pay (or average earnings).
- Explain the conditions of the suspension, ie that the employee should not enter the premises without the permission of the manager, unless they are attending any hearings arranged as part of the investigation, or meeting with their trade union representative.
- Advise the employee that the suspension will be confirmed in writing, detailing the officer appointed to undertake the investigation (if known at the time), the estimated timescales involved, and the allegations under investigation.
- It should be recognised that suspension can be a very stressful experience and employees should be offered the opportunity of seeking support from through their trade union representative. Where appropriate, the employee may also be referred to Occupational Health.

## 9 Special Cases

- 9.1 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 and prior to any suspension, however, the matter will be discussed at an early stage with an official employed by the union, after obtaining the employee's agreement.
- 9.2 Where an employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both cases concurrently.

## 10 Records

- 10.1 It is important to keep written records during each part of the disciplinary process, these will be kept confidential, and retained in accordance with the Data Protection Act 1998.
- 10.2 Copies of any hearing records will be available to employees, unless there are special circumstances where it is necessary to withhold information, for example, to protect a witness.

## **11 Review**

- 11.1 Stafford Borough Council reserves the right to periodically review this policy. Any amendment to the policy will be subject to consultation with the appropriate Unions.

### Examples of Misconduct and Gross Misconduct

#### Misconduct

The following are examples of misconduct which would normally justify the use of the Disciplinary Procedure. The list is neither exclusive nor exhaustive and, depending on the precise circumstances, any act listed below may be considered so serious as to be regarded as Gross Misconduct:

- Breach of organisational rules
- Disobedience of a reasonable instruction
- Insubordination
- Harassment
- Abuse of authority
- Unauthorised absence
- Poor time keeping
- Neglect of duty
- Unauthorised employment
- Sleeping on duty
- Criminal conduct
- Being an accessory to disciplinary offence
- Impropriety
- Conduct prejudicial to health

#### Gross Misconduct

Examples of serious offences that constitute acts of gross misconduct and potentially could lead to an employees dismissal:

- Theft
- Fraud
- Deliberate falsification of a Council document
- Misuse of or damage to Council property
- Fighting or assault on another person
- Deliberate damage to the Council's property
- Failure to observe Health & Safety and Security regulations
- Corrupt or improper practice
- Corrupt or improper practice involving children
- Sexual or racial harassment
- Being unfit for work through alcohol
- Use of illegal drugs
- Gross negligence
- Gross insubordination

This list is neither exclusive nor exhaustive, and in addition there may be other offences of a similar gravity which would constitute gross misconduct.