

# HR & OD POLICIES

human resources and organisational development



## Disciplinary Guidance for Managers

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# 1. INTRODUCTION

This document provides guidance on the handling of disciplinary problems in line with the principles of the Council's approved [Disciplinary Policy](#) and [Disciplinary Procedure Local Government, Disciplinary Procedure Teachers and Associated Professionals](#) and [Disciplinary Procedure Chief Officials](#).

Anyone using the Disciplinary Policy and Procedure should contact a member of [HR&OD](#) for support and assistance. How to Guides and documents to assist Investigating Officers and Chairs of Hearings are contained in the [Resource Pack](#).

Guidance is also available from a member of [HR&OD](#) to an individual or groups of managers on the practical application of the Policy.

An e-learning package on the policy is also available on [ALDO](#).

These guidance notes apply to all categories of employees unless otherwise stated.

# 2. HANDLING A DISCIPLINARY MATTER

## Follow the Disciplinary Procedure

An employee may have a legitimate appeal if the person conducting the case has failed to comply with any part of the recognised Disciplinary Policy & Procedure.

## Encourage Improvement

The main purpose of the disciplinary procedure is to encourage employees, whose behaviour at work and/or conduct is unsatisfactory, to improve.

## Handle Promptly

In many cases the right word at the right time and in the right way may be all that is required to prevent matters becoming worse. Where counselling is not considered appropriate the matter should be investigated as soon as possible.

## Gather Facts

All relevant information, including statements should be collected promptly and the line manager/head teacher should clearly understand precisely what the complaint is, prior to taking any further action.

## Be Firm

Maintaining satisfactory standards and dealing with disciplinary matters requires firmness on the part of the line manager/ head teacher.

## Be Fair and Consistent

It is essential to be as objective as possible when considering any case. Keep an open mind and do not prejudge issues.

It is recognised by the Council that it can be stressful for an employee to be investigated under the Council's Disciplinary Policy and Procedure. Therefore, it is recommended that the Investigating Officer confirm to the employee that an investigation, suspension and/or disciplinary hearing are in no way an assumption of guilt.

The [Council's Employee Assistance Programme \(EAP\)](#) should be provided to any employee subject to the Disciplinary Procedure. This confidential counselling service can be accessed by telephone and is available to you 24 hours a day, 365 days a year. Information can also be found on their website.

Where an employee is signed off with stress during a disciplinary investigation the investigating officer should refer him/her to Aberdeenshire Council's Occupational Health Service. Please follow the [Referral to Occupational Health Process](#).

## Role of Human Resources

An HR Officer will be allocated to support with each case. The investigating officer should discuss the case with the HR Officer who will provide support in conducting the investigation.

Prior to an investigatory meeting being arranged with the employee against who the allegations have been made, the investigating officer should pass all relevant paperwork and witness statements to the designated HR Officer.

Once the investigating officer and the designated HR Officer have discussed and agreed the relevant paper work an investigatory meeting with the employee concerned can be held.

### 3. ACCOMPANIMENT/REPRESENTATION

Employees may be accompanied or represented by a colleague or trade union representative at various stages of the procedure. These terms are defined as follows:

#### Accompany

A colleague/union representative accompanying an employee may:

1. Put the employee's case to the hearing
2. Respond on behalf of the employee to any views expressed at the hearing
3. Ask questions
4. Confer privately with the employee during the hearing
5. Sum up at the end of the hearing

But may not answer questions on the employee's behalf.

#### Represent

A colleague/union representative has all the rights above and in addition may answer questions on behalf of the employee, if the employee so wishes.

An employee accompanying/ representing a colleague will be given reasonable paid time off to attend the meeting, to conduct discussions with the colleague immediately before and after the meeting, and, if required, to familiarise him/herself with the issues.

Travel costs may be claimed in the usual manner. There is no obligation on any employee to accompany/represent a colleague when asked to do so.

No employee will be disadvantaged because he/she has accompanied or represented a colleague, or because he/she has declined to do so.

## 4. DISCIPLINARY PROCEDURE

### Under Performance Due To Work Capability

Cases of under-performance should be dealt with in a supportive and equitable manner, in accordance with the appropriate [Work Performance Policy](#).

#### Informal Steps:

##### **Advice, Guidance & Counselling**

Advice, guidance and counselling is a discussion(s) between the line manager/head teacher and the employee. The line manager/head teacher will identify whether or not the level of misconduct is suitable to be dealt with under the informal steps of the disciplinary procedure.

The aim of the meeting is to discuss any shortcomings in the employee's conduct and/or behaviour, to find out the reasons for the shortcomings and to support the employee to improve. This may be all that is needed to resolve the problem. When such a problem is identified, it should be dealt with immediately.

If an employee is being counselled under this policy, they should be informed to that effect i.e. 'You are being counselled under the Informal Stage of the Council's Disciplinary Policy and Procedure'.

##### **How Should Advice, Guidance & Counselling Be Done?**

It should be noted that teachers have a right to be represented at this informal stage. This does not apply to non-teaching employees.

The line manager/head teacher should hold the discussion in private on a one-to-one basis and ensure that communication is two-way. There may be exceptional instances where it is inappropriate for counselling to be conducted on a one-to-one basis. In such circumstances, it may be appropriate for the next level of line management to carry out the counselling.

The line manager/head teacher should put forward any concerns using examples to illustrate them and ask for an explanation. Managers should, wherever possible, ask open-ended questions to allow the employee to express him/herself more expansively.

Any criticism should be constructive and encourage improvement. If improvement is required, the line manager/head teacher should ensure that the employee understands what needs to be done, how behaviour/conduct will be reviewed and over what period. The employee should understand that disciplinary action may be taken if there is no improvement within the agreed time scales.

If it becomes clear that the matter is more serious, adjourn and consider whether more formal action may become necessary. The line manager/head teacher should keep a note of counselling for referral purposes e.g. mark the date of the counselling meeting in his/her diary along with any date for review. Full notes are not required as this is not an investigatory meeting.

The line manager/head teacher should confirm any agreed actions in writing.

## Formal Steps:

If a decision has been made that the level of misconduct requires to be dealt with under the formal steps, then the appropriate Disciplinary Procedure requires to be followed.

Please contact the Mediation and Employee Relations team in HR&OD for further guidance when dealing with the formal stage of the Disciplinary Policy.

### **Precautionary Suspension/Alternative Duties**

In certain cases, it may be necessary to suspend the employee on full pay pending the completion of investigations into the facts surrounding the complaint. For example if there are health and safety or child protection issues. The employee must be advised of the reasons for his/her suspension and the decision to suspend must be communicated or confirmed to the employee in writing.

Alternatives to suspension may be put in place to support the employee, this may include the consideration of a temporary transfer wherever possible. This will be looked at on a case by case basis. Such a suspension/temporary transfer will reflect the severity of the allegation, permit enquiries to proceed unhindered by the continued presence of the employee at their workplace and enable the employee to arrange representation if he/she wishes.

Please refer to the appropriate Disciplinary Procedure for further details and notification requirements in relation to placing an employee on suspension or on alternative duties.

## **Investigation**

The aim of the investigation is to establish the facts without delay. It is vital that confidentiality is maintained at all times and investigations should be carried out as discreetly and sensitively as possible. The investigation should be an objective and non-judgmental enquiry into the facts of the case. The purpose of a disciplinary investigation is to establish the relevant facts where there is an allegation of misconduct. The investigation is not a hearing to make a decision about a disciplinary sanction.

The investigating officer must notify the employee involved in writing at an early stage that a complaint or concern has been lodged. Please see sample wording within the appropriate disciplinary procedure.

The investigating officer should investigate the source of the complaint and having gathered as much information as possible, he/she should then hold an investigatory meeting along with an HR Advisor, with the employee concerned to discuss the matter further.

## **Information Gathering**

In situations where either a complaint has been received or where an employee's conduct has given cause for concern, an investigating officer will be appointed. The member of staff responsible for the investigation must be at the same level of management or higher than the employee's line manager.

The investigating officer should write to the employee concerned stating that a complaint has been lodged and that it is being investigated under the Council's Disciplinary Policy and Procedure. The employee should be notified as to the nature of the complaint, the process which will be followed and the right to be represented at any subsequent meeting.

The investigating officer should then (where possible) interview all witnesses involved and prepare signed and dated statements.

Witnesses should be informed that the employee concerned may see his/her statement and that, if matters proceed to a disciplinary hearing, it may be used as part of the evidence in a disciplinary hearing.

If during the investigation other allegations arise in addition to the original complaint, these should be referred back to the person who instigated the investigation in order that a decision can be made on how any additional allegations will be dealt with.



When children are witnesses and are asked to give a statement, the following procedure should be adhered to:

- Where a child is under the age of 16 he/ she must be accompanied by a parent or guardian at any meeting required under the Disciplinary Policy and Procedure.
- Where a child is 16 or over he/she may attend without a parent/guardian present. However, it is recommended that he/she be accompanied by an adult (i.e. Guidance teacher) at any meeting required under the Disciplinary Policy and Procedure.

### **Child and Adult Protection**

For advice on matters relating to child protection in terms of any disciplinary investigation, please contact the Child Protection Officer in Education, Learning and Leisure for support or alternatively seek advice from your local Social Work office.

For advice on matters relating to adult protection in terms of any disciplinary investigation, please seek advice from your local Social Work office.

You should also contact a member of [HR&OD](#) and Legal Services for guidance.

### **Internal Audit**

Where any matter arises which involves, or is thought to involve, irregularities concerning cash, stores, equipment or other property of the Council or any suspected irregularity in the exercise of the functions of the Authority (e.g. falsifying time sheets, working for another employer while in receipt of sick pay from Aberdeenshire Council), the investigating officer must contact the Chief Internal Auditor before commencing an investigation.

Where information of this nature comes to the investigating officer's attention during an investigation the Chief Internal Auditor must be informed immediately.

The Head of Service (Legal & Governance) and the Head of Service (Legal and People) must also be contacted in cases involving possible financial irregularities.

### **Witness Statements**

When taking a statement from a witness, the investigating officer should ask the employee to explain in his/her own words what he/ she witnessed in relation to the matter under investigation.

The investigating officer should ensure that he/she does not lead the witness by asking closed questions and should ask open ended questions whenever possible to allow for a full explanation.

No attempt should be made to take the statement verbatim, but rather to focus on obtaining the main facts. The investigator should summarise the information to the employee before concluding the meeting.

The investigating officer should then write up the statement in the first person i.e. "I saw..., I did...etc" It is essential that the date on which the statement was taken and the identity of the person who took the statement is recorded. When writing up the statement of the witness, the investigating officer should use the same language and style used by the witness when the statement was given. The answers should be put in the first person.

The witness should be asked to sign and date the statement when he/she is satisfied that it is a true record of what he/she witnessed.

It is highly recommended that the investigating officer has an administrative assistant to record the witness statements. This is recommended to ensure consistency and to help the process proceed quickly.

### **The Investigatory Meeting**

Once the investigating officer has taken statements from all the witnesses involved, a formal investigatory meeting must be arranged with the employee against whom the allegations have been made and, the following procedure should be followed:

- The investigating officer should inform the employee of the complaint and the requirement for him/her to attend an investigatory meeting. Please see [Resource Pack](#) for Local Government sample wording and Teaching sample wording. The investigating officer should also indicate who will be attending (i.e. an HR advisor) These details are required to be confirmed in writing.
- The investigating officer should give the employee reasonable notice of the meeting (at least seven calendar days). He/she should ensure that the employee is made fully aware of the allegation against him/her and his/her right to be accompanied (non-teaching employees)/ represented (teachers) when giving notice of the investigatory meeting.
- The investigating officer should have all the facts in terms of personal details, disciplinary record, and any special circumstances he/she is aware of which may need to be taken into account (e.g. personal issues which may be affecting his/her behaviour or conduct).

- The employee does not see any statements, reports, etc. at this stage.
- A statement will be taken from the employee. The employee will have the opportunity to agree and sign the statement.
- At the commencement of the meeting the investigatory officer should make it clear to the employee that this is an investigation of the complaint. They should state the complaint and give the employee every opportunity to respond.
- The decision to proceed or otherwise to a disciplinary hearing is that of the manager/head teacher who appointed the investigating officer.
- The investigating officer must make sure that thorough notes are taken of the meeting and a statement is produced.
- Where the employee refuses to agree and sign a statement after ample opportunity to make amendments, the investigating officer will use the statement as it stands as part of the investigation.
- Where the employee refuses to give a statement, the investigating officer notes this, and his/her report is based on the information he/she has gathered to date.
- The investigating officer must ensure that the investigatory meeting is an opportunity for the employee to give their version of events. The investigating officer should not give a personal opinion of the employee's action or at any time give the employee a warning of any kind.

### **Signed Off Due to Stress or Other Illness**

If during the course of a disciplinary investigation the employee concerned is signed off sick, and if there are concerns with their fitness to participate the investigating officer should follow the process below:

- Refer the employee to the Council's occupational health provider, as soon as possible after the employee is signed off sick (please follow the [Referral to Occupational Health Process.](#))
- State clearly in the referral that the employee is currently being investigated under the Aberdeenshire Council's Disciplinary Policy and Procedure. It should not be indicated what the allegations against the employee are.
- Request confirmation as to whether the employee is fit to attend an investigatory meeting.

- In many instances the Occupational Health Advisor will indicate that in order for the employee's situation to improve or be resolved the investigatory meeting is required to take place.
- Where the Occupational Health Advisor states that the employee is fit to attend an investigatory meeting the meeting should be arranged as soon as possible.
- Where the Occupational Health Advisor states that the employee is not fit to attend an investigatory meeting, the advice given in the medical report should be followed.

### **Use of Computers and Information Stored on Them**

If, during a disciplinary investigation, the investigating officer is required to access an employee's work computer, e-mail, internet logs, or network files he/she must contact the Information Security Officer in Corporate Services before proceeding. It should be noted that the Information Security Officer may be contacted prior to an investigating officer being appointed if this is deemed appropriate.

If applicable, isolate the computer in question, insuring that any employee(s) involved do not have a chance to modify anything.

At no time prior to or during a disciplinary investigation should an officer access an employee's computer without contacting the Information Security Officer.

### **Conclusion of the Investigation**

Following the investigatory meeting and receipt of the employee's statement the investigating officer considers all the information gathered. He/she then provides a detailed written report to the person who instigated the investigation. In some cases further investigation may be required prior to the decision on how to proceed.

Please refer to the guidance contained within [Investigating Officer Report](#).

The person who instigated the investigation will decide how this matter will be addressed and writes to the employee informing him/her of the outcome of the investigation at the earliest opportunity (no later than seven calendar days following the conclusion of the investigation).

It should be noted that the investigatory officer will be responsible for presenting the management case at a disciplinary hearing.

Where on conclusion of an investigation, it is decided that no further action is to be taken in terms of the disciplinary procedure, then the employee will be informed of this and no reference to the investigation should be placed on the employee's personal file.

## Small Schools

If within a small school it is not possible to proceed with an investigation as outlined previously the head teacher of the school should act as Chair of any disciplinary hearing. The investigating officer should be another head teacher.

Where the head teacher of the school is required to give a witness statement as part of the investigation another two head teachers will be required to investigate and chair any subsequent disciplinary hearing.

## 5. THE DISCIPLINARY HEARING

As with the investigatory meeting, it is vital to ensure that the officers attending are well prepared prior to the hearing taking place. Ensure that the employee has adequate notice of the hearing (at least 7 calendar days) in order to prepare his/her case and to acquire representation where required.

The manager/head teacher should be mindful of the timing of the hearing i.e. do not commence a hearing when there may not be appropriate time for the hearing to conclude. Arrangements should be considered which might affect those present at the hearing such as child care arrangements, lunch breaks, school holidays (term time employees) and the ability of those present to work outside their normal working pattern.

Consideration should be given as to potential outcome of the hearing. If dismissal is a potential outcome then this must be detailed within the letter to the employee and a representative from Legal and Governance will require to attend the hearing.

### Preparing For a Disciplinary Hearing

The chair of the disciplinary hearing writes to the employee requesting that he/she attend a disciplinary hearing. Please find sample wording for Inviting an Employee to a Disciplinary Hearing in the Resource Pack. The employee should be given at least seven calendar days' notice of the hearing. The letter requesting him/her to attend a disciplinary hearing should include the following:

- Following a thorough investigation the line manager/head teacher (who appointed the investigating officer) will either chair or nominate a chair for the disciplinary hearing. The investigating officer cannot chair the disciplinary hearing.
- Notification of a disciplinary hearing under Aberdeenshire Council's Disciplinary Policy and Procedure.

- Notification of the date, time and place of the hearing.
- List of allegations/problems of conduct and/or behaviour along with dates/times/ examples as appropriate.
- Include any documents such as statements taken from clients, employees in connection with the matter, or other relevant documentation.
- Inform the employee that he/she has the right to be represented at the hearing by a trade union representative or a work colleague.
- State who will hear the case, any advisers who will also be present e.g. HR Officer, Legal Representative, and the person who will present the Council's case.
- Indicate any witnesses who will be called to support the Council's case.
- Indicate any live warnings the employee may already have.
- Seek clarification from the employee if he/ she is to be represented and by whom.
- Seek clarification from the employee if he/she intends to call witnesses and, if so, when.
- The employee should provide evidence that will be used in his/her defence at least two calendar days prior to the hearing date.

Where dismissal is a possible outcome, ensure an adviser from Legal & Governance is also present at the Hearing (in addition to the Chair and HR). The employee must be advised in the letter inviting them to the hearing that their dismissal may be a possible outcome.

Where an employee is unable to attend on the date indicated in the letter it is good practice to give the employee an alternative date for the hearing.

Where the hearing has been rearranged due to a request by the employee or their trade union representative and he/she has been given sufficient notice of an alternative date, it is reasonable to expect them to attend the hearing on that date. It may be appropriate to consider advising the employee in the letter re-arranging the hearing that if they are unable to attend for a second time the hearing may go ahead in their absence.

When arranging accommodation for the hearing there should be two rooms available; one for the hearing and another to enable the employee and his/her representative to adjourn.

When inviting a witness to attend a disciplinary hearing he/she does not have a right to be represented. In exceptional circumstances (e.g. the witness is very nervous) the witness may be accompanied.

Anyone accompanying a witness may not take any part in the disciplinary hearing.

The employee must be made aware of the outcome of the disciplinary hearing within seven calendar days, with the details and reasons for any sanctions given and the consequences of a repetition. In being advised of the disciplinary sanction which is being applied, the employee should be advised also of the improvements which should be expected of them, the arrangements to be put into place to monitor this and the availability of appropriate support to allow them to achieve and maintain the improvement. The employee should also be advised of their right to appeal.

Written confirmation of the aforementioned warnings must be marked private and confidential and sent by recorded delivery post.

## Follow Up

In order to ensure that disciplinary action has the desired effect in terms of altered behaviour and/or conduct, appropriate support mechanism (e.g. review periods, training requirements, etc) as outlined at the disciplinary hearing should be carried out by the employee's line manager/head teacher.

Any appropriate support mechanism that is recommended to the employee's line manager/head teacher as a result of a disciplinary hearing must be confirmed to the employee in the letter indicating the outcome of the hearing.

Following a disciplinary hearing the line manager/head teacher should arrange a meeting with the employee to discuss the implementation of the recommendations of the hearing. It may be appropriate to establish a joint action plan and indicate that his/her conduct and/or behaviour will be monitored and reviewed, confirming any time scales for this.

The employee should be given regular feedback on their progress or where it is still believed that the standards laid down are not being met.

The line manager should ensure that any appropriate support mechanisms such as training, supervision or monitoring as a result of the disciplinary hearing is carried out.

## 6. APPEALS

The purpose of an appeal hearing is to give the employee who has been the subject of a disciplinary action an opportunity to put a case forward on one of the following three bases:

- The Council's disciplinary policy and/or its procedure have not been correctly applied.
- New evidence provided by the employee, which would have had a bearing on the earlier decision, was not previously available.
- The sanction imposed at the disciplinary hearing was inappropriate.

An appeal hearing is not an opportunity to re-hear the original disciplinary. An employee's appeal must be based on one or more of the three reasons outlined above.

An employee shall have the right to be represented by a trade union representative or a work colleague at any appeals hearing.

Should any appeal against disciplinary action be successful and the action subsequently withdrawn, any written reference shall be disregarded in the employee's record and the employee notified in writing.

Appeals against serious action including dismissal will be heard by the Appeals Committee.

## 7. GUIDANCE DOCUMENTS

Please see Aberdeenshire Council's How To Fact Sheets for advice and support throughout the Disciplinary Process:

[How to Carry out a Disciplinary Investigation](#)

[How to Compile a Report on the Outcome of an Investigation](#)

[How to Conduct a Disciplinary Hearing](#)

[How to Present a Case at Appeal](#)

[How to Present a Management Case](#)

[How to Take a Statement During an Investigation](#)



Also in the Resource Pack are simple step to step tables for both Local Government and Teachers, outlining the three different stages of Disciplinary and the various actions to take.

[Local Government Table](#)

[Teachers Table](#)

# Disciplinary

## Index of Documents

### Policy

<b>Revision Date</b>	<b>Previous Revision Date</b>	<b>Summary of Changes</b>
01-03-2006	-	Creation of all Documents
18-04-2013	01-03-2006	Revision of Policy
01-05-2015	18-04-2013	Update to format
12-05-2016	01-05-2015	Amendment
07-10-2016	12-05-2016	Amendment
02-09-2022	07-10-2016	Updated links