

# HR & OD POLICIES

human resources and organisational development



## Disciplinary Procedure Local Government & Craft

## 1. INTRODUCTION

All disciplinary action taken, either informal or formal should aim to resolve conduct issues and aid improvement in behavior.

Disciplinary matters should be managed as discreetly and sensitively as possible. It is vital that confidentiality is maintained at all times by all parties concerned. Any malicious disclosure by any party, may be dealt with in accordance with the Disciplinary Procedure.

Parties should not disclose details of any disciplinary issue to the media, other than agreed press statements by an official Aberdeenshire Council spokesperson, to ensure that the whole matter remains confidential with information shared on a need-to-know only basis.

The Disciplinary Procedure relates to matters of misconduct. Matters relating to incapability due to ill health or disability shall be dealt with using the Attendance Management Procedure. Matters relating to work performance shall be dealt with via the Work Performance Ability Procedure. In some circumstances advice may be sought from Legal & People to determine the most appropriate procedure.

The Disciplinary Policy and Procedure should be applied with support and advice from Legal & People. Support documents can be found in the Disciplinary Resource Pack.

## 2. HEALTH & WELFARE OF EMPLOYEES

Employees who have difficulty at any stage of the procedure should discuss the situation with their line manager or an HR Advisor as soon as possible. The [Employee Assistance Programme](#) is available to all employees. This confidential counselling service can be accessed by telephone on **0800 023 9324** and is available to you 24 hours a day, 365 days a year. Further details can be found at <https://vivup.tercltd.co.uk?CODE=107808>

## 3. TRADE UNION REPRESENTATIVES

In all cases where the employee is a trade union representative the appropriate Trade Union Official will be notified at the earliest opportunity.

## 4. NOTIFYING EXTERNAL PARTIES

At the start of any formal disciplinary proceedings, employees should be asked whether they hold membership of any professional body.

Normally a referral to a regulatory body should not be made until the internal proceedings have been concluded. However there are certain circumstances where a referral to SSSC or the Care Commission must be made earlier. Guidance is available from Legal & People. If a referral is made to a regulatory body, the individual should be informed in writing that the referral has been made.

## 5. PROTECTION OF VULNERABLE GROUPS

The Protection of Vulnerable Groups (Scotland) Act 2007 requires Aberdeenshire Council to refer any employee who is or has been carrying out regulated work with children to the Scottish Ministers for consideration for listing on the Children's List, if he/she harms a child or puts a child at risk of harm and is dismissed or moved away from access to children as a consequence. This also applies to individuals who resign whilst the disciplinary process is ongoing.

Aberdeenshire Council is also required to refer any employee who is or has been carrying out regulated work with protected adults to the Scottish Ministers for inclusion in the Adult's List if he/she harms a protected adult or puts a protected adult at risk of harm and is dismissed or moved away from access to protected adults as a consequence. This also applies to individuals who resign whilst the disciplinary process is ongoing.

Concerns regarding an employee's professional competence, which do not constitute grounds for referral, should be addressed by the relevant professional regulatory body e.g. the SSSC for a social worker. The outcome from that action might require a referral to be made to Disclosure Scotland.

Please refer to the Protection of Vulnerable Groups Referral Procedure for more information.

## 6. INFORMAL STAGES

### Counselling

Managers should first seek to resolve minor disciplinary issues informally and expediently whenever possible. Any support, training and required expectations should be confirmed to the employee in writing.

If formal action might be considered as the next step, then this should be made clear to the employee.

A commitment to establishing effective working relationships should be demonstrated by the employee and line manager. This commitment should be shown throughout the process of advice, support, and implementation of improvement.

## 7. FORMAL STAGES

No disciplinary action will be taken until the matter has been fully investigated. The aim of a disciplinary investigation is to establish the relevant facts and determine whether there is a basis for considering formal disciplinary action.

## 8. COOLING OFF PERIOD

In some cases of alleged misconduct, it may be appropriate to send the employee home. A cooling off period does not imply any assumption of misconduct.

A cooling off period should not last longer than 3 working days. The employee will be paid during the cooling off period if the employee would have normally worked on these days. The cooling off period allows time to consider whether disciplinary investigation is necessary and if alternative duties or suspension is appropriate.

## 9. ALTERNATIVE DUTIES / PRECAUTIONARY SUSPENSION

In certain cases, it may be necessary to suspend the employee on full pay or place the employee on alternative duties, pending the completion of the disciplinary investigation. The employee must be advised of the reasons for his/her suspension or placement on alternative duties and these must be confirmed in writing.

Any suspension/placement on alternative duties is used in order to permit enquiries to proceed unhindered by the continued presence of the employee at their workplace, and to protect the employee and Aberdeenshire Council while matters are investigated.

Suspension and alternative duties are not considered as disciplinary actions, and do not imply any assumption of the employee's misconduct.

While suspended, the employee should not visit Aberdeenshire Council premises or contact any Aberdeenshire Council service users, contractors, or staff. An appropriate manager will be identified as a designated point of contact for the employee during the period of suspension. If a suspended employee needs access

to their workplace, he or she should contact their designated manager to arrange this.

Whilst on suspension, the employee should be available to attend investigatory meetings or return to work, if appropriate. Therefore, employees should continue to request annual leave if there are periods they will be unavailable.

Any suspension/placement on alternative duties will be reviewed within 28 calendar days. If this period is extended beyond the initial 28 day period, it will be reviewed hereafter on a regular basis, at least every 28 calendar days.

## 10. INVESTIGATION

The purpose of a disciplinary investigation is to establish the facts relating to any allegations against the employee. No formal disciplinary hearing will be arranged until the matter has been investigated. If a disciplinary investigation is required, a Head of Service (or their nominee) will act as chair for the formal disciplinary process. An investigating officer will be appointed to carry out an investigation into the alleged misconduct, and report their findings to the chair.

The investigating officer should contact an HR advisor for support as required.

The employee will be notified in writing, that an investigation will be undertaken in accordance with Aberdeenshire Council's Disciplinary Policy and Procedure, along with a brief summary of the reason(s) for this.

The employee under investigation is required to co-operate fully and promptly with the investigation process. This will include informing the investigating officer of the names of any relevant witnesses, disclosing any relevant documents and attending investigatory interviews as required.

The employee under investigation may be accompanied by either a trade union representative or work colleague to an investigatory meeting. However, availability of a work colleague or union representative must not cause unreasonable delay to the investigation process.

The investigating officer should gather any relevant information without unreasonable delay, should interview any relevant parties and interview the employee.

The investigating officer should be mindful that there may be a need to inform a specialist officer (e.g. Child Protection Officer; Chief Internal Auditor; Information Security Officer) of the disciplinary investigation as required.

Disciplinary investigations should be completed as quickly as possible, ideally within 28 calendar days. If the timescale cannot be complied with, the employee should be notified in writing of the reasons for the delay.

The investigating officer will record and/or document the information gathered e.g. signed statements, evidence such as timesheets, etc. There is no right for witnesses to be accompanied when providing a statement.

On conclusion of the investigation, the investigating officer will report his/her findings to the chair, along with all information gathered during the investigation. The chair will then make a decision on how to progress the matter.

The decision to proceed to a disciplinary hearing or otherwise, will be communicated to the employee within 7 calendar days following the conclusion of the investigation.

Where on conclusion of an investigation it is decided that no further action is to be taken, no reference to the investigation should be placed on the employee's personal file. However, it may be appropriate for a nominated manager to arrange counselling.

## 11. DISCIPLINARY HEARING

Where on conclusion of an investigation it is decided that there is a formal case to answer, the employee will be invited to attend a disciplinary hearing.

The employee will be given at least 7 calendar days' notice of the hearing in writing. Unless otherwise mutually agreed, a disciplinary hearing should take place no later than 14 calendar days following the conclusion of a disciplinary investigation.

The letter inviting the employee to the hearing should contain the disciplinary allegations which are the subject of the hearing, copies of all information used to support the management case, including signed and dated witness statements, and information about the possible consequences if the allegations are established.

The employee should be asked to submit any information that they wish to be considered at the hearing to the chair of the hearing, at least 2 working days prior to the date of the disciplinary hearing.

All employees have the right to be accompanied or represented by a Trade Union representative or work colleague at a disciplinary hearing. If the employee or their representative is unavailable to attend the scheduled disciplinary hearing, they must offer an alternative date within a reasonable period after the date of the original hearing.

The purpose of the disciplinary hearing is to allow the chair to decide whether the allegations against the employee have been established and, if any of the allegations have been established, to determine what, if any disciplinary sanction to impose.

The investigating officer will present the management case and will have the opportunity to call witnesses. The employee will have the opportunity to ask questions of the investigating officer and/or the witnesses, raise points regarding the evidence gathered and call witnesses.

The chair is responsible for the conduct of the hearing and may adjourn the hearing for any purpose considered appropriate, including clarification of issues raised. The chair can, but does not have to, be accompanied by representatives from Legal & People who can provide advice as appropriate. The final decision on whether the allegations are established, and the sanction to be imposed, is that of the chair.

An accurate note of the disciplinary hearing should be taken and any sanction imposed should be recorded in writing.

A formal disciplinary sanction should never be given without a disciplinary hearing being held.

## Disciplinary Hearing Outcomes

The disciplinary hearing may result in different outcomes, ranging from no further action through to dismissal. The decision of the hearing, the sanction imposed (if any) and the right of appeal will be communicated to the employee in writing within 7 days of the conclusion of the hearing.

### No Further Action

If it is determined that the allegation(s) are not established, no further formal action will be taken.

### Written Warning

A warning is given for minor breaches of discipline, and should be issued orally and confirmed in writing within 7 calendar days of the disciplinary hearing. The warning will set out the nature of the misconduct. The warning must also include reference to the fact that any further breach during the life of the warning may render the employee subject to further disciplinary action. Where appropriate, it will also set out the improvement required and by when this should be achieved. Employees should also be advised at this stage of any appropriate support mechanisms, his/her right of appeal and when the warning will expire. A written warning will be live for 9 months from the date it is issued, after which it will expire.

## Final Written Warning

A final written warning is given for serious breaches of discipline, or a failure to improve conduct following receipt of a written warning. The warning should be issued orally and confirmed in writing within 7 calendar days after the disciplinary hearing. The warning will set out the nature of the misconduct or failure to improve. Where appropriate, it will also set out the improvement required and the timescale. The employee must also be informed that any further breach during the life of the warning may result in dismissal. Employees should also be advised at this stage of any appropriate support mechanisms, his/her right of appeal and when the warning will expire. A final written warning will be live for 12 months from the date it is issued, after which it will expire.

## Serious Action, Short of Dismissal

The type of serious action taken will depend upon the circumstances of the case, and will be taken where a serious breach of discipline has occurred. Serious action may only be taken by a Head of Service (or nominee), and should only be given in conjunction with a final written warning.

The following examples of sanctions that may be taken in conjunction with a final written warning include:

- Demotion
- Transfer
- Financial Penalty

## Dismissal

Dismissal may be necessary for serious repeated misconduct; further instance of misconduct during the life of a warning; or gross misconduct where no previous warnings exist. The employee must be informed in writing of the effective date of dismissal and whether the dismissal is summary or with notice.

## Misconduct and Gross Misconduct

The following list provides examples of types of behaviour which the Council normally considers to be misconduct or gross misconduct. This list is prepared for the purposes of illustration, and is not intended to be exhaustive or exclusive:



## Misconduct

- Failure to comply with a reasonable order, instruction or contractual requirement
- Failure to comply with the Council's Smoking Policy
- Poor timekeeping
- Failure to comply with the Council's Attendance Management Policy
- Use of inappropriate language

## Gross Misconduct

- Serious insubordination – for example repeatedly refusing to follow policies/procedures or follow reasonable management instructions
- Theft/fraud
- Physical violence
- Conduct due to alcohol, drug or substance misuse
- Inappropriate relationship(s) with service users to whom services are provided by Aberdeenshire Council
- Misuse of the internet/e-mail/ICT equipment (refer to Aberdeenshire Council's Acceptable Use Policy and Code of Practice for Monitoring and Investigation of Employees)
- Harassment/bullying where this is of a serious and/or prolonged nature

## 12. RIGHTS OF APPEAL

Employees have the right of appeal against any formal disciplinary action taken against them. Should any appeal against disciplinary action be successful and the action subsequently withdrawn, any written reference shall be expunged from the employee's employment record. This would be confirmed to the employee in writing.

### Lodging of Appeals

An appeal should be lodged in writing using the appropriate form, by the employee, or their nominated trade union representative within 14 calendar days of the

disciplinary outcome. The employee should detail the grounds of their appeal in writing.

An appeal hearing shall normally be arranged within 28 calendar days of receipt of the notice of appeal.

## Appeal Hearing

The chair of the disciplinary hearing should not hear any appeal.

Appeals against a written warning should be directed to the employee's Head of Service who will arrange for an appropriate senior officer to hear the appeal.

Appeals against a final written warning and serious action should be directed to the employee's Service Director who will arrange for an appropriate senior officer to hear the appeal.

Appeals against dismissal should be directed to the Head of Legal & People who will arrange for the appeal to be heard by the Appeals Committee.

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

The appeal is not a rehearing of the original hearing, but rather a consideration of the specific area with which the employee is dissatisfied in relation to the outcome of the original hearing. The appeal chair will therefore confine discussion to those specific areas rather than reconsider the whole matter afresh.

Following the appeal hearing, the appeal chair will either:

- Confirm the original decision; or
- Revoke the original decision; or
- Substitute a different decision.

Notification of the outcome of an appeal hearing will be confirmed in writing to the employee within 7 calendar days. The employee will have no further right of appeal.

## 13. THE LIFE OF WARNINGS

All records considered at a disciplinary hearing, and any subsequent appeal, should be retained by Legal and People within the employee's personnel file so they are secure and confidential.

A disciplinary warning will expire at the conclusion of the warning period:

Written Warning                      9 months

Final Written Warning              12 months

The employee will be notified in writing when their warning has expired. A copy of the letter and details of the warning will be retained on the employee's employment record. Should further similar misconduct be established an expired warning may be considered.

# 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
29-03-2016	01-05-2015	Amendment
07-07-2017	29-03-2016	Revision of Policy
02-09-2022	07-07-2017	Updated EAP information and updated terms
03-03-2025	02-09-2022	Minor revision to procedure.