

Policy and Sustainability Committee

10.00am, Thursday 25 June 2020

Disciplinary Policy

Item number	
Executive	Executive
Wards	All
Council Commitments	

1. Recommendations

- 1.1 To approve the new the Disciplinary Policy

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Disciplinary Policy

2. Executive Summary

- 2.1 The purpose of the new disciplinary policy is to ensure there is a fair, effective and consistent method in place to deal with concerns surrounding conduct and to encourage improvement where conduct is believed to have fallen below acceptable standards, either through the implementation of the informal or formal stages of the process.
- 2.2 This policy relates to matters of conduct and behaviour. Where concerns exist around capability, these should be managed through the Performance Management Policy.
- 2.3 This policy, if approved, will replace the current Disciplinary Procedure, which was approved by Committee on 25 February 2014.
- 2.4 This policy applies to all local government employees within the Council's workforce. Teachers and Chief Officials have separate arrangements in place.

3. Background

- 3.1 The current Disciplinary Procedure was approved by the Corporate Policy and Strategy Committee on 25 February 2014 and became effective on 1 May 2014.
- 3.2 Feedback surrounding policy application and effectiveness and has been collected from a number of sources, including Trade Unions, line managers and Human Resources (HR). The revisions to policy and supporting guidance have been made in line with our approach to HR policy development.

4. Main report

- 4.1 The current Disciplinary Procedure and supporting documents are compliant with the broad principles and recommended practice set out in the ACAS Code of Practice surrounding Disciplinary.
- 4.2 However, while no significant amendments to the existing framework were deemed necessary, there was an opportunity to make procedural improvements.
- 4.3 Amendments to style, tone and language were required, in line with current approach to HR policy development at the Council.

- 4.4 The policy and supporting documentation have been redesigned so that the structure is more concise, and clearer for user(s) to follow. The policy sets out the guiding principles and framework for handling conduct concerns.
- 4.5 It is now explicit in Section 1 of the policy that it should be applied where there are concerns surrounding an employee's conduct and/or behaviour, and that matters of capability should be handled through the Performance Management Policy.
- 4.6 Guidance on undertaking formal investigations has been strengthened, including the requirement to carry out investigations without unreasonable delay and to ensure that indicative timescales are clearly communicated.
- 4.7 While not a statutory right, the right to accompaniment at formal investigation meetings has been included. This is in line with prevailing practice at the Council and is likely to contribute towards more effective resolution of conduct concerns.
- 4.8 The current procedure states that formal warnings might be considered if misconduct reoccurs within 3 months of a warning expiring. This was considered unnecessary and out of line with good practice and has been removed.
- 4.9 It was considered disproportionately punitive to withhold an annual pay step for those on formal disciplinary warnings and this has been removed.
- 4.10 It has not been possible to secure local collective agreement of this policy, although meaningful consultation has been undertaken and there are no significant outstanding objections from the trade unions.

5. Next Steps

- 5.1 An implementation plan will be developed, including the update of training modules and materials to come into effect in the autumn.
- 5.2 Following approval of the policy for local government employees, a full review of the employee code of conduct and teachers' disciplinary procedure will follow to ensure that they complement these revisions where appropriate.

6. Financial impact

- 6.1 There is no material impact arising from this report.

7. Stakeholder/Community Impact

- 7.1 The policy meets our legal obligations in relation to formal consultation.
- 7.2 The policy applies to all local government employees (excluding teachers and chief officers) and is explicit in the consistency of its application.
- 7.3 Further to formal consultation, this policy has been assessed for possible impacts on vulnerable groups, people with protected characteristics, equality and human rights and economic factors as part of our integrated impact assessment.

8. Background reading/external references

- 8.1 [Disciplinary Procedure – Corporate Policy and Strategy Committee 25 February 2014](#)

9. Appendices

N/A

Disciplinary Policy

The Council (we) strive to maintain effective working relationships with and between colleagues. We have a responsibility to maintain acceptable standards of behaviour at work and are committed to supporting and encouraging colleagues to achieve these standards.

Where behaviours fall below what is considered acceptable, the Disciplinary Policy provides a framework to ensure standards of behaviour are applied in a fair, consistent and sympathetic manner.

It is recognised that, in most cases, potential issues of misconduct will be dealt with through the normal day to day discourse between colleagues and their manager. The Disciplinary Policy should only be used when management advice and guidance has failed to produce the required improvement or when the matter is serious enough to require formal action.

Author

Employee Relations, Human Resources,
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Scope

This policy applies to all Council colleagues,
except Teachers and Chief Officers

Purpose

The purpose of this policy is to provide direction and support to colleagues with poor conduct, and where appropriate, take disciplinary action against such colleagues in a firm, fair and consistent manner to ensure there is a change in behaviour.

Review

The policy will be reviewed as and when a change to the existing policy deems this necessary, primarily as a result of: changes to legislation or statute; agreement of new national terms and conditions of service or Government Policy; organisational change; or resulting from changes agreed through Trade Union Consultation.

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1. Policy Aims

The aim of this policy is to ensure there is a fair, effective and consistent method in place to deal with concerns surrounding conduct and to encourage improvement where conduct is believed to have fallen below acceptable standards, either through the implementation of the informal or formal stages of the process.

This policy is designed to:

- support colleagues in meeting the Council's standards of conduct;
- provide a framework for establishing whether misconduct has occurred; and
- support managers in managing misconduct issues.

This Disciplinary Policy and User Guide must be followed when a potential misconduct issue has been identified and not resolved through normal day to day supervision arrangements, or where more serious allegations arise. No disciplinary outcome will be decided until the appropriate steps outlined in this policy have been followed and the facts have been established.

This policy relates to matters of conduct and behaviour. Where concerns exist around performance, these should be managed through the Performance Management Policy instead, however, please seek advice from the HR Case Management team for advice, if you are unsure.

2. Roles and Responsibilities

Managers and colleagues must give high priority to both informal and formal aspects set out in the policy to ensure that they are completed as quickly as possible.

All employees are responsible for:

- meeting and maintaining the required standards of conduct; and
- meeting and maintaining any externally set occupational registration requirements and/or professional standards of conduct.

All managers are responsible for:

- making sure that they and their team members are aware of the Council's required standards of conduct;
- making sure that they and their team members are aware of any externally set occupational requirements and/or professional standards;
- enforcing these and taking action to improve conduct where necessary; and
- handling any disciplinary issue sensitively, fairly and within a reasonable timescale.

3. Expectations of Conduct

The standards of conduct we are all expected to follow are set out in the Employee Code of Conduct. We are expected to maintain these professional and reasonable standards of conduct at work.

The standards of conduct required from all colleagues are set out in a range of policies including (but not limited to) the:

- Employee Code of Conduct
- Anti-bribery Policy
- Policy on Fraud Prevention
- ICT Acceptable Use Policy

These policies are available on the Orb along with supporting guidance. Colleagues who don't have access to the Orb can access them on the external website, or request copies from their manager, askHR, or their trade union representative if they are a member.

Occupations which are governed by rules and professional standards of conduct set by external regulatory bodies must also be adhered to. Failure to meet and maintain these may result in disciplinary action being taken, up to and including dismissal.

The Council has a statutory duty to notify some external registration bodies and professional when misconduct has taken place or when disciplinary action has been taken. These external bodies include:

- The Scottish Social Services Council
- The Care Inspectorate
- Police Scotland
- Disclosure Scotland

If you think you need to contact a regulatory body surrounding disciplinary action that's been taken, you should contact askHR. You can find out more about this on the Orb.

Misconduct

Misconduct is behaviour that is considered unacceptable at work. It can also include unacceptable behaviours outside work if it impacts on your contract of employment.

Gross misconduct

Gross misconduct is behaviour and/or conduct that is so serious that your employment with us will normally be brought to an end without notice or pay in lieu of notice (summary dismissal). Gross misconduct can also occur outwith the workplace.

There are more details surrounding misconduct and gross misconduct in the User Guide, including examples of each.

4. Informal Resolution

Managers should always consider whether it is possible to resolve minor conduct issues informally. This is most likely to be possible and appropriate where the alleged misconduct is not of a serious nature.

In many circumstances, a confidential conversation between the colleague and the line manager is all that's necessary to resolve an issue. On other occasions, it may be appropriate to hold a series of conversations, which could form part of regular one-to-one meetings, to ensure the necessary support and review is in place.

The purpose of these discussions is to ensure that the colleague understands the nature of the concerns, to provide them with the opportunity to respond and, where appropriate, to explain the improvement expected of them. A record should be retained of these discussions to support the process and ensure

clarity. The retention period will vary depending on the relevant timescales for improvement but should not exceed 3 months.

As informal resolution is not formal disciplinary action, the team member does not have the right to be accompanied by a work colleague or trade union representative although requests would be considered in some circumstances, and where it is agreed that their attendance would be beneficial to informal resolution.

Further information on achieving informal resolution can be found in the User Guide.

5. Formal Stages

Where more serious or repeated misconduct occurs, this should be dealt with using the formal stages of the policy. At this stage, a Nominated Officer (senior manager with the authority to dismiss for more serious conduct) will be appointed to manage the formal stages and chair any disciplinary proceedings.

Establishing the facts

The Nominated Officer will appoint an Investigating Officer to gather facts about the alleged misconduct, which will include interviewing the colleague and any relevant witnesses.

The investigation should be completed without unnecessary delay and the findings will be reported back to the Nominated Officer. It is then the role of the Nominated Officer to decide whether there is a case to answer at disciplinary hearing

An indicative timescale for completion of the investigation will be provided and clearly explained to the colleague at the outset. This will be provided with the understanding that timescales may need to change (typically extended) where, for example, new information comes to light that requires further investigation or where there are unavoidable delays. It's the responsibility of the Nominated Officer to ensure the colleague is kept informed of progress and of any delays.

It is the Nominated Officer's role to appoint an appropriate Investigating Officer for the case, considering any expertise required and any potential conflicts of interest. The Investigating Officer and Nominated Officer cannot be the same person.

Colleagues may be accompanied at investigation interviews by an accredited trade union representative/official or work colleague.

Formal hearing

If the Nominated Officer decides that there is a disciplinary case to answer, then the colleague who the allegations are being made about will be notified in writing giving at least 7 days' notice and asked to attend a disciplinary hearing.

The notification should contain details of the alleged misconduct, the Investigating Officer's report, witness statements and any other relevant evidence gathered at the investigation stage, so that the colleague and their representative can prepare fully for the disciplinary hearing. The notification should also include the possible consequences to the allegations being upheld following the disciplinary hearing.

If the alleged misconduct is upheld, the Nominated Officer can issue one of a number of possible sanctions, which are:

- written warning;
- final written warning;
- punitive action short of dismissal (such as final written warning and demotion); or
- summary dismissal.

Where serious or gross misconduct is alleged, a Nominated Officer will consider temporarily redeploying the colleague or, where this is not appropriate, suspending the colleague on full pay as a precautionary measure. Where a Nominated Officer has not yet been appointed or is not available, a Head of Service can decide to suspend until the Nominated Officer has conducted an initial review of the case. Where a period of precautionary suspension with pay is considered necessary, this should be as brief as possible, kept under review and it should be made clear that precautionary suspension is not considered disciplinary action.

Colleagues have the right to be represented at formal hearings by:

- an accredited trade union representative;
- another Council colleague; or
- an official employed by a trade union.

If a colleague prefers to be accompanied by another Council colleague, they will be allowed reasonable time off with pay to act as the companion. Separate arrangements apply if their representation is a trade union official.

Further information on how the formal stages should be managed can be found in the User Guide.

6. Appeals

Where an employee feels that disciplinary action taken against them is unfair, they can appeal against the decision. The appeals process differs slightly, depending on the level of the action taken.

Appeal against Written Warning or Final Written Warning

Appeals should be made in writing to the relevant manager or another manager one level above the manager who issued the original warning, indicating the grounds of appeal within 14 calendar days of receiving the outcome of the disciplinary hearing.

The appeal hearing should be arranged without reasonable delay, normally within 4 weeks of receipt of the appeal submission or as soon as reasonably possible if that timescale cannot be met.

Appeals against dismissal and action short of dismissal

Where an employee wishes to appeal against dismissal or action short of dismissal, they must do so in writing, using the Notification of Appeal form. This should be sent along with any documents relevant to the appeal within 14 calendar days of receiving the outcome of the disciplinary hearing.

Arrangements will be made for the appeal to be heard within 28 working days or as soon as reasonably possible if that timescale cannot be met. Committee Services will issue the agenda and papers for the meeting of the Personnel Appeals Committee no less than 5 working days in advance of the appeal hearing.

Further information on the appeals process and where to submit appeals to can be found in the User Guide.

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