

<b>Meeting of:</b>	<b>CABINET</b>
<b>Date of Meeting:</b>	<b>22 OCTOBER 2024</b>
<b>Report Title:</b>	<b>DISCIPLINARY POLICY</b>
<b>Report Owner / Corporate Director:</b>	<b>CHIEF OFFICER – LEGAL &amp; REGULATORY SERVICES, HR &amp; CORPORATE POLICY</b>
<b>Responsible Officer:</b>	<b>PAUL MILES GROUP MANAGER HUMAN RESOURCES AND ORGANISATIONAL DEVELOPMENT</b>
<b>Policy Framework and Procedure Rules:</b>	<b>There is no effect upon the Policy Framework and Procedure Rules as a result of this report.</b>
<b>Executive Summary:</b>	<b>The purpose of this report is to seek approval of the revised Disciplinary Policy.</b>

## **1. Purpose of Report**

- 1.1 The purpose of this report is to seek Council of the revised Disciplinary Policy, attached as **Appendix 1**.

## **2. Background**

- 2.1 It is important that Human Resources (HR) policies and procedures are reviewed periodically to ensure they reflect current employment legislation, best practice and support the HR Business Partner model.
- 2.2 The process for undertaking these reviews includes feedback from managers within each directorate and HR Business Partners and consultation with Trade Union representatives.

## **3. Current situation / proposal**

- 3.1 In addition to updating the policy in terms of a consistent presentation and style, the main changes to the policy include:
- clarity on when to undertake management discussions and to ensure consistency of approach;

- the introduction of a fast track process for dealing with certain disciplinary issues;
- the identification and detailing of the roles and responsibilities of all involved; and
- the introduction of updated tools and templates to help manage the process effectively.

3.2 As previously mentioned, Trade Union representatives were consulted in relation to the review. They have reviewed the updated policy and appendices. The Trade Union representatives confirmed their agreement to proceed with implementing the reviewed policy. The revised policy has also been shared with Corporate Management Board and the Heads of Service Group.

#### **4. Equality implications (including Socio-economic Duty and Welsh Language)**

4.1 An initial Equality Impact Assessment (EIA) screening has identified that there would be no negative impact on those with one or more of the protected characteristics, on socio-economic disadvantage or the use of the Welsh Language. It is therefore not necessary to carry out a full EIA on this policy or proposal.

#### **5. Well-being of Future Generations implications and connection to Corporate Well-being Objectives**

5.1 The well-being goals identified in the Act were considered in the preparation of this report. It is considered that there will be no significant or unacceptable impacts upon the achievement of well-being goals/objectives as a result of this report.

#### **6. Climate Change Implications**

6.1 There are no climate change implications arising from this report.

#### **7. Safeguarding and Corporate Parent Implications**

7.1 There are no safeguarding and corporate parent implications arising from this report.

#### **8. Financial Implications**

8.1 There are no financial implications as a result of this report.

#### **9. Recommendation**

9.1 It is recommended that Cabinet approves the revised Disciplinary Policy.

#### **Background documents**

None

# DISCIPLINARY POLICY

## SCOPE STATEMENT

This Policy applies to all employees of Bridgend County Borough Council except:

- Those employed under the Conditions of Service for School Teachers in England and Wales.
- Those employed by Governing Bodies in educational establishments under delegated powers.
- Agency workers or volunteers.
- Those who are within their probationary period.

**Date of Issue:**

<b>DOCUMENT CONTROL</b>	
Document Title	Disciplinary Policy
Previous Publication Date	July 2018
<b>DOCUMENT APPROVAL</b>	
This document received approval from:	Date:
Group Manager HR & OD	
Trade Unions	17 August 2023
Corporate Management Board	21 August 2024
Council	
<b>REVISION HISTORY</b>	
Revision History	This policy replaces the Council's Disciplinary Policy and Procedures dated July 2018 and Managers Guidelines July 2011. It introduces a fast-track process for dealing with certain disciplinary issues and sets out updated tools and templates to help manage the process effectively.

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## **1. Introduction and Purpose**

- 1.1 This policy sets out the Council's approach to promoting and maintaining high standards of conduct amongst our employees.
- 1.2 Clear disciplinary rules and processes benefit the Council and its employees, ensuring transparency and fairness and providing a framework to support the delivery of high-quality services for our customers and service users.
- 1.3 It is recognised that standards of performance and conduct can, at times, fall short for a number of reasons. The aim of the policy is to help deal with such issues as quickly as possible, supporting employees where necessary and being clear about the expected standards of performance going forward.
- 1.4 Equally, it is also recognised that continued or serious misconduct will not be accepted and will need to be dealt with robustly. This policy sets out the processes that will be pursued in such circumstances.
- 1.5 The policy applies to all employees regardless of length of service (except for those expressly excluded as per the scope statement on the cover of this document).
- 1.6 The policy has been developed in consultation with the Council's recognised trade unions and taking account of relevant legislation and ACAS guidance. including, but not limited to, reference to the Wales Safeguarding Procedures and Cwm Taff Morgannwg's guidance document on Responding to Safeguarding Concerns.
- 1.7 All managers will play a crucial role in ensuring clarity in relation to work expectations, dealing with concerns when they arise and providing the appropriate support in order for employees to achieve and maintain standards.
- 1.8 The definition of the roles and responsibilities of all those involved in the disciplinary process are set out in Section 14 of this policy.

## **2. General Principles**

- 2.1 The policy aims to ensure that any concerns are dealt with consistently and fairly and in accordance with the principles as set out below: -
  - a) The requirement for confidentiality applies to all parties involved in any disciplinary process.
  - b) Issues of conduct should be dealt with as they arise, initially informally (where appropriate) before referring matters through the formal process.
  - c) No disciplinary action will be taken against an employee until the case has been fully investigated. The only exception to this may be in cases where misconduct is acknowledged by the employee as part of the agreed fast-track process.
  - d) An employee will be advised of the nature of the allegations against them and given the opportunity to state their case before any disciplinary sanction is given.

- e) No employee will be dismissed for a first breach of discipline except in the case of gross misconduct where the outcome could be dismissal without notice.
- f) An employee will have the right of appeal against any disciplinary action except where it is agreed as part of the fast-track process.
- g) At all stages of the procedure the employee will have the right to be accompanied by a trade union representative or work colleague other than at a management discussion (3.6).
- h) The Council has the discretion to allow an employee to be accompanied at the hearing by a legal representative in cases where their membership of a professional body is mandatory and could be prejudiced by the outcome of the disciplinary process.
- i) If an employee has difficulty at any stage of the procedure because of a disability, they should discuss the situation with their line manager and/or the HR Department as soon as possible.
- j) No disciplinary action will be taken against a Trade Union official until the full-time officer of the Trade Union has been informed.
- k) Where an employee is charged with a criminal offence, the fact that the criminal offence has not yet been tried in the courts, will not necessarily prevent an internal investigation to continue or disciplinary action taken arising from the same events (see section 8).
- l) Alleged or actual breaches of discipline which threaten the safety of children, young people and vulnerable adults will require the immediate implementation of the Council's Safeguarding Policy (see section 9).
- m) After the statutory authorities (e.g., the police as part of the Safeguarding process) have completed their consideration of the allegation, it will be referred back to the Corporate Director or nominated officer to consider if the matter needs to be dealt with under the staff disciplinary process. This will happen even if the statutory authorities take the decision not to pursue a criminal investigation.
- n) Disciplinary concerns about financial impropriety must be brought to the attention of the Section 151 Officer and legal impropriety to the Monitoring Officer. Both officers must be informed in the case of any alleged misappropriation of funds.
- o) A disciplinary investigation will not normally be put on hold in situations where an employee raises a concern as part of the Council's Resolution Policy. It will normally be the case that the concern, where it applies to the disciplinary process, is considered as part of the disciplinary process rather than commencing a separate process.
- p) Where time limits are referred to during this procedure, they may be varied by agreement between the employee and the Council.
- q) All correspondence in respect of the Formal Procedure must be issued from Human Resources.

- r) This policy is supported by a number of forms, checklists, and risk assessment tools to help managers as outlined in Appendix 1 to 9.

### **3. Procedure for dealing with Misconduct**

- 3.1 In the event that any misconduct issues have not been successfully resolved informally (or the allegations appear to be too serious for the informal approach) then the formal disciplinary process will need to be followed.

#### **a. The importance of an Initial Assessment**

- 3.2 The manager concerned will notify the Corporate Director or nominated Officer of the alleged misconduct in order to discuss the matter and to determine whether a formal investigation should be initiated. An assessment form is attached at **Appendix 3** to help inform this process.
- 3.3 Such a decision should be taken on the basis of an initial assessment of the available facts and advice from the relevant HR Business Partner. This will ensure that proportional steps are taken in progressing the matter, in accordance with the policy.
- 3.4 A guide to what may be considered misconduct and gross misconduct is set out at **Appendix 1** and **Appendix 2** respectively.

#### **b. Management intervention (Management Discussion)**

- 3.5 Following the initial assessment, it may be necessary to undertake a management discussion. This is used to address minor concerns in a positive, honest, and constructive manner and without recourse to a formal disciplinary investigation process.
- 3.6 A management discussion meeting will be arranged by the manager for the manager and employee only within 7 calendar days of the decision. The manager will keep and share a note of the meeting with the employee in order to be able to monitor and review any follow-up actions. A form for recording the outcome of the discussion is given at **Appendix 4**
- 3.7 The purpose of the meeting will be for the manager to:
- Be clear about the identified areas of concern/misconduct.
  - Explore any underlying reasons for the alleged misconduct.
  - Ensure that there is clarity about the expected standards of conduct.
  - Put in place an action plan to help the employee meet the expected standards.
  - Be clear that any continuation of the misconduct will be dealt with formally.

A management discussion may not be suitable in relation to:

- Cases where allegations, if proven would constitute gross misconduct.
- Cases where the employee has already received a 'live' written or final warning.
- Cases which include issues relating to Safeguarding, Police matters or fraud/financial impropriety.



### c. Fast Track Process

- 3.8 The Fast Track process may be used as an alternative way of resolving disciplinary cases and minimising the time and stress involved in going through a detailed investigation and setting up a full disciplinary hearing.
- 3.9 It is applicable only where:
- An employee has admitted in full all allegations made against them.
  - An employee has requested (and consented to) the use of the process.
  - The Corporate Director or nominated officer has agreed that the use of the process is appropriate.
- 3.10 The request for a Fast Track approach may be made as soon as the allegations are known and shared with the employee (A request and decision form is attached at **Appendix 5**).
- 3.11 The Fast Track process may not be suitable in relation to:
- Cases where allegations, if proven would constitute gross misconduct.
  - Cases where the employee has already received a 'live' written or final warning.
  - Cases which include issues relating to Safeguarding, Police matters or fraud/financial impropriety.
- 3.12 In situations where the approach is considered suitable and in accordance with 3.9 above, the employee will be invited to a fast-track decision meeting with the appropriate Corporate Director or nominated officer (Responsible Officer) and the appropriate HR Business Partner.
- 3.13 During the meeting the Responsible Officer will summarise the key facts relating to the allegations as outlined in the form at **Appendix 5**. The employee (or their representative) will have the opportunity to put forward comments and statements including any mitigating circumstances. No witnesses will be called during the meeting.
- 3.14 At the conclusion of the meeting, the Responsible Officer will, if applicable, confirm the intended decision to issue a first written warning. The implications and 'life' of the warning will be the same as if it were issued following a full disciplinary hearing and as set out at 4.3 below.
- 3.15 Subject to the employee's continuing consent the outcome of the process will be confirmed to the employee in writing within 7 calendar days. There will be no right of appeal against the outcome of a Fast Track disciplinary process.
- 3.16 Where the employee does not provide continuing consent, then it will be necessary to complete the disciplinary investigation and arrange a full disciplinary hearing (as set out at 3.17 to 3.32 below). In such a situation, the information related to the fast track process will be disregarded for the disciplinary process.

#### **d. Suspension**

- 3.17 In certain circumstances, it may be necessary to suspend an employee from duty. This may be necessary as soon as the allegations are raised, or at any time during the course of an investigation and in circumstances where:
- The allegations relate to potential gross misconduct.
  - Where relationships have broken down
  - Where the presence of the person involved may hinder the investigation
  - Where there are risks to the Council's property
  - Where there are risks to other employees or service users
- 3.18 A suspension from duty with pay is a neutral act to protect the integrity of the investigation. It is not a disciplinary sanction and should not be seen as a presumption of guilt. That said, it should only be considered as a last resort and where alternatives (e.g., temporary redeployment) are not appropriate.
- 3.19 A decision to suspend an employee will need to be taken by the Corporate Director or nominated officer (in discussion with HR Business Partner) and following consideration (and completion) of the Suspension Risk Assessment Checklist at **Appendix 6**.
- 3.20 The decision should be confirmed in writing within 7 calendar days together with any conditions attached to the suspension, the details of an appropriate 'Keeping in Touch Officer' during the investigation and any additional support as set out at Section 11.
- 3.21 During the suspension the employee will receive their normal pay until a disciplinary decision has been confirmed.
- 3.22 The suspension will be for no longer than is necessary to investigate any allegations of misconduct or so long as is otherwise reasonable while any disciplinary proceedings are outstanding. The suspension should be subject to periodic review by the Corporate Director (or nominated officer) upon receipt of regular updates from the Investigating Officer and HR Business Partner in relation to the progress of the investigation and taking account of the information recorded on the suspension risk assessment. Decisions to revoke or continue with suspension will be made by the Corporate Director or nominated officer.

#### **e. Disciplinary investigation**

- 3.23 Following the initial assessment it may be necessary to undertake a formal investigation into the issues of concern. An Investigating Officer will be appointed by the Corporate Director or nominated Officer and a clear plan and timescales set out in order to ensure that the process is managed without undue delay.
- 3.24 The manager will inform the employee of the decision to undertake a formal investigation and the employee will be sent a letter from the HR Business Partner confirming: -
- The allegations of misconduct that have been made against them.
  - The name of the Investigating Officer
  - Their right to be represented.

- The availability of support and/or reasonable adjustments available

3.25 The role of the Investigating Officer will be to gather sufficient information/evidence to determine whether there is substance to the allegations. This will involve:

- interviewing the employee subject to the allegations
- affording the employee, the opportunity to respond to the allegations
- interviewing all relevant witnesses
- taking statements from all interviewees
- analysing and weighing all evidence collected during the investigation.

3.26 All employees interviewed during the investigatory process will be afforded the right of accompaniment by a colleague (where there is no conflict of interest) or by a trade union representative.

3.27 Employees will be given advance notice of at least 7 calendar days of an investigation meeting; this can be sooner if all parties agree. The Council reserves the right, with the agreement of the employee to dispense with an investigation meeting and to proceed directly to a formal disciplinary hearing where appropriate.

3.28 Evidence required from witnesses, other than current employees, will be sought via written correspondence.

3.29 The amount of investigation involved will vary depending on the allegations and the circumstances of the case. In cases where there is no dispute about the allegations the investigation may just require the gathering of the main facts. The aim will be to gather enough information whilst limiting the stress on all individuals involved.

3.30 In considering whether to refer the matter to a full disciplinary hearing, the Investigating Officer will need to give consideration to the misconduct concerned but also any live warnings relating to previous misconduct.

3.31 At the conclusion of the investigation the Investigating Officer will prepare a report making one of the following recommendations. The report will be submitted to the Corporate Director or nominated officer for information:

1	There is no case to answer	In which case the employee will be advised verbally and in writing as soon as possible
2	That there are concerns but which can be dealt with through a management discussion	In which case the employee will be advised in writing and the matter referred to the appropriate manager (see section b above)
3	There is a case to answer which will need to be considered at a formal disciplinary hearing	See paragraphs 3.27 to 3.32

3.32 In the scenarios as set out at 1 and 2 above, the investigatory documentation will be destroyed in accordance with the Council's HR Retention Policy.

#### **f. The Disciplinary Hearing**

- 3.33 A disciplinary hearing will be arranged in circumstances where there is a case to answer, and the Fast Track process (see paragraphs 3.8 to 3.16) has not been considered suitable or has not been requested by the employee.
- 3.34 The disciplinary hearing will be conducted by the Responsible Officer (i.e., the Corporate Director or nominated officer (see definition at 14.6)). They will be advised by a HR Business Partner who should not have had any previous involvement in the matter.
- 3.35 Confirmation of the hearing will be sent in writing to the employee and their trade union representative no less than 14 calendar days before the hearing and include:
- The date, time, and location of the hearing
  - Details of the disciplinary allegations
  - The investigation report and all documents that will be referred to at the hearing
  - Confirmation of the panel members who will be considering the allegations
  - Confirmation of the employee's right of representation
- 3.36 In addition, the employee should be asked to confirm whether they wish to call any witnesses to the hearing and reminded of the need to submit copies of any documentation that they wish to rely on no later than 5 calendar days before the hearing. Any character witness evidence should be sent in writing rather than require presence at the hearing.
- 3.37 Where it is possible that the outcome of the hearing could be dismissal, this should be made clear in the letter to the employee.
- 3.38 The procedure for the hearing is set out within **Appendix 8**.

#### **4. Disciplinary Outcomes**

- 4.1 In considering the outcomes of a disciplinary hearing, all cases will be dealt with on their merits and taking into account the evidence presented in the investigation pack and at the hearing and the following factors:
- The employee's current disciplinary record (i.e., any 'live' warnings)
  - Any mitigating circumstances as presented by the employee.
  - The reasonableness and proportionality of the outcome
- 4.2 The range of disciplinary sanctions is set out below along with the length of time that they should remain 'live' on the employee's disciplinary record:
- a. First Written Warning**
- 4.3 A first written warning will usually be appropriate for a first act of misconduct and where there are no 'live' warnings on the employee's record. The warning will be effective from the date of the decision and will remain active for 6 months.

## **b. Final Written Warning**

4.4 A final written warning will usually be appropriate in the following circumstances:

- Where there has been an act of misconduct while an existing and 'live' written warning is already on the employee's disciplinary record.
- Where the seriousness of the misconduct is sufficient to warrant a final written warning even though there are no other existing and 'live' warning on the employees' disciplinary record.

4.5 The final written warning will be effective from the date of the decision and will remain active for 12 months.

## **c. Dismissal or action short of dismissal**

4.6 The outcome of the hearing may be dismissal in the following circumstances:

- Where there has been a further or continuing act of misconduct within the life of an existing written or final written warning. This would normally result in dismissal with notice or pay in lieu of notice (if appropriate).
- Where it is reasonably believed that the allegations amount to an act of gross misconduct. This would usually result in summary dismissal without notice or pay in lieu of notice. Examples of gross misconduct are given at **Appendix 2**.

4.7 As an alternative to dismissal, the Corporate Director or nominated officer may, at their discretion, consider the option of demoting the employee to a current and vacant lower graded post. This would normally be based on the strength of any mitigation offered by the employee and would be accompanied by a final written warning.

4.8 In cases involving the loss (or overpayment) of monies or materials with a monetary value as a result of the improper actions of an employee, the Council will take steps to recover the shortfall from the employee.

4.9 Where errors occur in submitting claims or record sheets, any subsequent overpayment will be recovered through the agreed procedure for such matters.

4.10 All warnings given in accordance with this policy will be kept on the employee's disciplinary record in accordance with the Council's HR Retention Policy. Such warnings will, however, be disregarded in deciding the outcome of future disciplinary proceedings after the active period, subject to the appropriate period of satisfactory conduct and performance.

## **d. Confirmation of Disciplinary Warnings**

4.11 Where a warning is issued, this will be confirmed in writing within 7 calendar days of the hearing. The warning will set out clearly:

- The misconduct or poor performance that led to the warning
- The action or improvement that is required as a result of the warning

- The duration of the warning
- The likely consequences of any repeated or further misconduct
- The employee's right of appeal.

## **5. Disciplinary Appeals**

- 5.1 All employees have the right of appeal against disciplinary action. Any appeal must be made in writing to the Group Manager HR/OD within 14 calendar days of receipt of the letter confirming the disciplinary outcome.
- 5.2 The employee must indicate the basis of the appeal using the notification form set out in **Appendix 7**. This will determine the extent of the appeal process, i.e., whether it is a full rehearing of the disciplinary allegations or rehearing of the specific appeal points.
- 5.3 Appeals against disciplinary warnings will be heard by the Corporate Director or nominated officer, who has not been involved in the case to date, and the decision will be final. The outcome may include:
- Confirmation of the original decision
  - Impose a lesser warning
  - Conclude that no disciplinary action should be taken against the employee
- 5.4 At the appeal hearing the management side presentation will be made by the Investigating Officer who will be accompanied by the Responsible Officer who conducted the original disciplinary hearing. The procedure will follow the same principles and process as the disciplinary hearing (**Appendix 8**).
- 5.5 Appeals against dismissals will be considered by the Elected Members of the Council's Appeals Panel. The procedure to be adopted is outlined in **Appendix 9**.
- 5.6 In cases where Elected Members uphold an appeal against dismissal and a decision is made to re-instate/re-engage, the appellant shall suffer no loss in relation to their previous contract of employment from the date of dismissal up to the date of re-employment. Re-instatement will be to the original post held on the same terms and conditions.
- 5.7 Any termination payments received in connection with the initial dismissal decision will be recovered from the employee.

## **6. Sickness absence during the disciplinary process**

- 6.1 The sickness absence policy will apply as normal in the circumstances where an employee is absent due to sickness absence during a disciplinary process. In such circumstances due regard will be given to Occupational Health advice in terms of the employee's fitness to participate in the process.
- 6.2 Being absent from work due to sickness absence will not, however, automatically stop matters being progressed under the disciplinary policy.

## **7. Non-attendance at disciplinary investigation meetings/hearings**

- 7.1 Employees must make all reasonable efforts to attend disciplinary meetings. If an employee is not able to attend such a meeting, a further date will be arranged as

soon as possible, but within a month from the original date. If the employee does not attend the re-arranged date without good reason, then a decision may ultimately be made in the employee's absence and on the basis of the evidence available and presented in the investigation report. The employee may submit a written statement to be taken into consideration in circumstances where they choose not to attend.

- 7.2 The above will apply if the employer or trade union representative requests to postpone a meeting or hearing and will be regarded as if the employee has requested a postponement.

## **8. Police Investigations and Criminal Offences**

- 8.1 In circumstances where an employee is subject to a criminal investigation, the Corporate Director or nominated officer (with advice from HR Business Partner) will determine to what extent the Council needs to conduct its own investigation prior to considering disciplinary action. The Council will not usually wait for the outcome of any police investigation or any prosecution before deciding what action to take unless specifically advised otherwise by the police.

- 8.2 Where an employee is subject to a criminal investigation or charged with a criminal offence, they must inform their manager as soon as possible. Consideration will then be given to what action (if any) needs to be taken. The main consideration will be whether the matter impacts adversely on the employee's suitability for their job or undermines the reputation of the Council.

## **9. Disciplinary Issues and the Safeguarding of Children and Adults at risk**

- 9.1 Where actual or alleged misconduct is in relation to (or affects) the wellbeing and safety of children and adults at risk, then immediate reference will need to be made to the Council's Safeguarding Policy and Wales Safeguarding Procedures. Once safeguarding processes are concluded and a determination is made to proceed with a formal disciplinary investigation, 9.2 should be followed.

- 9.2 In such circumstances it will be important that:

- Early advice is sought from the HR Business Partner.
- All investigations are concluded and recorded regardless of whether the employee resigns during the course of the investigation
- The outcomes of the disciplinary process are retained on the employee's file permanently as outlined in the HR Retention Policy.
- Referrals are made to the Disclosure and Barring Service (DBS) and appropriate professional groups (see below)

- 9.3 If an employee is barred by the Disclosure and Barring Service (DBS) or receives an unsatisfactory DBS check during the course of their employment and cannot legally be employed in their role, they would be subject to the Council's disciplinary policy and may ultimately be dismissed by the Council.

- 9.4 Similarly, if an employee has not renewed their professional registration or paid the relevant professional fee and cannot legally be employed in their role, they would be subject to the Council's disciplinary policy and may ultimately be dismissed by the Council.

## **10. Referral to Professional Bodies**

- 10.1 Some professions are bound by specific codes of conduct e.g., the Education Workforce Council Code of Professional Conduct and Practice, Codes of Professional Practice for Social Care. Should an employee be subject to a disciplinary investigation then the service manager may be obliged to make a referral to the appropriate professional body. This will sometimes include a referral to the DBS if the post, which they occupy, requires a DBS check.

## **11. Support to employees during the disciplinary process**

- 11.1 Providing appropriate support to employees who are subject to disciplinary processes, is important. This will include providing details of a 'Keeping in Touch' officer during the course of the investigation and ensuring the employee is aware of and has access to the Council's Employee Assistance Programme.
- 11.2 In addition it may also be necessary to consider appropriate adjustments to help facilitate the disciplinary hearing. This may include holding the hearing at a neutral venue, using a hybrid approach, providing the opportunity for breaks, and, at the request of the employee, conducting the hearing through written correspondence.

## **12. Documentation and Data Protection**

- 12.1 Accurate records will be maintained throughout the disciplinary process and kept confidential in accordance with the Data Protection Act 1998 and the General Data Protection Regulation 2018. All such records will be disregarded for disciplinary purposes after the expiry of any disciplinary sanction and removed from the employee's file in accordance with the Council's HR Retention Policy.

## **13. Development and Recovery Plan**

- 13.1 It is recognised that the disciplinary process can often be both wearing and stressful, putting strain on future relationships. It is important, therefore that subsequent time is taken by the employee's manager to explore measures to rebuild such relationships. This will require an open, honest, and two-way conversation with the employee over the weeks following the disciplinary hearing and, importantly, outside the formality of the disciplinary process. It will help to:
- Clarify, support, and review any actions that arise out of the disciplinary process
  - Ensure that any mutual learning points are shared, discussed, and built on
  - Provide an opportunity to resolve any concerns that the employee may have
  - Assure the employee of their continuing importance to the organisation
- 13.2 In some circumstances it may also be appropriate to consider a post disciplinary mediation process where relationships have been adversely affected as a result of the initial misconduct.

## **14. Roles and Responsibilities**

- 14.1 It is important that there is clarity about roles and responsibilities in relation to the Disciplinary Policy and Procedure:



#### 14.2 Employee responsibilities

- Behave in a way that is consistent with the Council's Code of Conduct, rules, policies and procedures, and relevant professional codes of conduct
- Ensure an understanding of the requirements and provisions of the Policy.
- Cooperate with the requirements of the Disciplinary Policy including attendance at meetings without undue delay
- Seek advice and representation if needed from trade union representatives or work colleagues as soon as possible

#### 14.3 Line Manager responsibilities

- All managers will play a crucial role in ensuring clarity in relation to work expectations, dealing with concerns when they arise and providing the appropriate support in order for employees to achieve and maintain standards.
- Deal with any concerns about inappropriate conduct or behaviour promptly
- Ensure that they and their employees are aware of all relevant policies and procedures
- Where relevant, line managers will undertake risk assessments as needed and to be reviewed on a regular basis.

#### 14.4 Corporate Director or Nominated Officer responsibilities

- Confirm the need for an investigation to take place where it is felt necessary
- Authorise any decision to suspend an employee based on a risk assessment
- Ensure that the Investigating Officer has the resources and support to carry out the investigation within acceptable timescales
- Determine, if necessary, the appropriateness of a fast track approach

#### 14.5 Investigating Officer responsibilities

The Investigating Officer will be appointed by the Corporate Director or nominated officer.

- Undertake a full, fair, and objective investigation
- Undertake such an investigation as thoroughly but as promptly as possible
- Compile an investigation report for the consideration of the Corporate Director or nominated Officer
- Make recommendations in relation to the outcome of the investigation
- Have completed the relevant in-house training

#### 14.6 Responsible Officer responsibilities

This role may be undertaken by the Corporate Director or nominated officer (as per 14.4 above) or by a separately appointed Corporate Director or nominated officer.

- Chair a disciplinary hearing or appeal if one is necessary
- Ensure the hearing is carried out in accordance with the Disciplinary Policy
- Seek further information if this becomes necessary
- Determine any appropriate level of disciplinary sanction
- Confirm decision in writing

#### 14.7 HR Business Partner responsibilities

- Provide support, coaching and advice to managers in relation to the policy
- Support Investigating Officers during the investigation
- Provide advice to the Responsible Officer at disciplinary or appeal hearings
- Identify any development needs following the application of this policy
- Issue all relevant correspondence relating to the policy

#### 14.8 Trade Union Representative responsibilities

- Work with all parties to facilitate timely and early resolution to matters
- Provide advice and support to employees throughout the process
- Make representations on behalf of employees where requested but not answer questions on behalf of the employee
- Work with managers, HR and employees to ensure the policy is adhered to

### **15. Further Advice**

- 15.1 Further information or advice about any aspect of this policy can be obtained from the Council's HR Business Partner Team

### **16. Monitor and Review**

- 16.1 This policy will be reviewed in accordance with the policy review timetable or sooner if there is a need due to operational reasons or any legislative changes.

### EXAMPLES OF MISCONDUCT

Misconduct is a breach of the Council's expected standards of behaviour, rules, values and policies. The severity and frequency of the breach will be considered when determining the level of disciplinary warning. In very serious cases, the breach could be regarded as gross misconduct (see examples in Appendix 4).

The following is a non-exhaustive guide to actions that will be regarded as misconduct, unless there are clear and mitigating circumstances:

- Unauthorised absences from work
- Poor timekeeping (lateness)
- Refusal to carry out a reasonable instruction
- Unsatisfactory standards of conduct at work
- Disorderly behaviour whilst on duty
- Misuse of Council facilities
- Negligence causing injury
- Negligence causing damage to property
- Breaches of confidentiality
- Abusive behaviour
- Failure to adhere to Council procedures and policies

Such breaches of discipline will not normally result in dismissal for a first offence but may result in dismissal if the employee has previously committed an act or acts of misconduct for which a warning or warnings have been issued and are currently 'live'.

### EXAMPLES OF GROSS MISCONDUCT

Gross misconduct is conduct which is so serious that it amounts to a fundamental breach of trust and confidence between the Council and the employee and renders the employment contract irreversibly damaged. Such misconduct would justify the summary dismissal of the employee without notice.

The following is a non-exhaustive guide to actions that will be regarded as gross misconduct and will lead to summary dismissal unless there are clear and mitigating circumstances. Examples include:

- Theft or attempted theft of property, money or equipment belonging to the Council, service users or fellow employees
- Malicious damage to property belonging to the Council or fellow employees
- Any form of actual or threatened violence
- Acts of bullying, harassment, victimisation, or unlawful discrimination
- Breaches of the Council's safeguarding procedures
- Discrimination on the grounds of sex, race, religion, ethnic origin, disability, age, or sexual orientation
- Sexual misconduct
- Deliberate falsification of documents/records or the provision of false information
- Serious and deliberate or careless violation of health and safety rules and standards which causes or could cause risk to the employee, other employees, or members of the public
- Incapacity at work due to the use of alcohol or illegal drugs
- Accessing, copying or distributing offensive, obscene or inappropriate material
- The discovery of a conviction not spent under the Rehabilitation of Offenders Act 1974, and which was not disclosed at the time of engagement (except for driving offences, unless driving is relevant to the employee's duties)
- Criminal conduct outside the workplace, which reflects adversely upon the Council or on the employee's suitability for the job.
- De-registration under specific professional codes of practice
- Serious insubordination or refusal to follow management instructions
- Deliberate and/or repeated failure to adhere to the policies, procedures, codes of conduct of the Council
- Breach of the Council's Whistle-blowing Policy
- Serious breaches of confidence
- Serious breaches of financial regulations
- Serious negligence or carelessness which causes unacceptable loss, damage or injury

### DISCIPLINARY CONSIDERATION: INITIAL ASSESSMENT

The purpose of the initial assessment is to ensure that the allegations have some element of potential substance to justify triggering the disciplinary process. The assessment will be completed by the line manager following a discussion with the employee, where appropriate.

In carrying out an initial assessment care should be taken to ensure that the process does not interfere with or prejudice an employee's procedural rights.

<b>Employee Name</b>	
<b>Nature of the allegation (s)</b>	
<b>Source of the allegation (provide any documentary evidence if available)</b>	
<b>Initial response of employee (if a response is given<sup>1</sup>)</b>	
<b>Has there been previous and similar concerns in relation to the employee's conduct within the last 2 years?</b>	
<b>Are there any live warnings on the employee's file?</b>	
<b>Has advice been taken from the relevant HR Business Partner?</b>	
<b>Is it appropriate for the allegation to be dealt with through a management discussion?</b>	Yes/No
<b>Is it appropriate for the allegation to be dealt with through a disciplinary investigation?</b>	Yes/No

<sup>1</sup> Care should be taken to ensure that this is not a solicited response to questions raised by the manager which may prejudice a later formal investigation and interfere with the employee's rights to accompaniment

<b>Does the allegation meet the criteria for misconduct or gross misconduct</b>	Misconduct/Gross misconduct
<b>If the allegation is considered as gross misconduct, can the employee remain in their role during the disciplinary investigation process?</b>	Yes/No If no, please complete the Suspension Risk Assessment form (Appendix 6 in the Policy)

**Manager's signature:**

**HoS or GM signature:**

**MANAGEMENT DISCUSSION: RECORD OF MEETING**

<b>Date of meeting</b>	
<b>Parties in attendance</b>	
<b>Description of concern raised</b>	
<b>Employee response</b>	
<b>Future expectations in terms of behaviour and conduct (and over what period)</b>	
<b>Support / Action Plan</b>	

**Line Manager signature:**

**Employee signature:**

This note will be shared with the employee and placed on the employee's personal file. It will be disregarded for any subsequent formal disciplinary purposes after 6months.

## DISCIPLINARY FAST TRACK REQUEST AND DECISION FORM

### Initial Request

<b>Employee Name:</b>	
<b>Trade union representative (if appropriate):</b>	
<b>Disciplinary allegations as set out in letter to me dated:</b>	

In relation to the disciplinary allegations set out in the above letter I request that the disciplinary fast track approach should be commenced as set out in Section 3 (c) of the disciplinary policy. I have read and understand the implications of this and have taken appropriate advice on the matter. I understand that I can change my mind prior to the conclusion of the fast track meeting

<b>Signature:</b>		<b>Date:</b>	
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<b>Corporate Director or nominated Officer:</b>	
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In relation to the disciplinary allegations set out in the above letter I am content that the allegations are appropriate to be dealt with in the disciplinary fast track approach as set out in Section 3 (c) of the disciplinary policy. I have taken appropriate advice from my HR Business Partner

<b>Signature:</b>		<b>Date:</b>	
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### Confirmation of Outcome at Fast Track Meeting

<b>Date of Fast Track Meeting:</b>	
<b>Names of Parties attending:</b>	
Employee:	
Representative (if applicable):	
Responsible Officer:	
HR Business Partner:	

<b>Main points discussed at meeting</b>
<b>Mitigation offered by employee (as appropriate)</b>



<b>Expectations in relation to future conduct (as appropriate)</b>
<b>Action points / support measures (as appropriate)</b>
<b>Outcome:</b> Disciplinary Sanction (if applicable) Duration of Sanction (if applicable)

**I accept the outcome of this fast track process as set out above and understand the implications of this and have had the opportunity to take appropriate advice on the matter. I understand that any further misconduct will lead to further and more serious disciplinary action being taken in accordance with the Disciplinary Policy and Procedure.**

<b>Signature: (Employee)</b>		<b>Date:</b>	
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**NOTE:** The outcome of the fast track process should be confirmed in writing in accordance with the provisions set out in section 4 d. of this policy

## SUSPENSION RISK ASSESSMENT CHECKLIST

Suspension is a serious step and should only be considered as a last resort and where possible alternatives to suspension have been properly considered. A decision to suspend an employee may be necessary as soon as the allegations are raised, or at any time during the course of an investigation. A decision to suspend an employee should be taken by a Corporate Director (or nominated officer) and following discussion with a HR Business Partner. Such a decision should take into consideration the factors as set out below:

Name of Employee	
Nature of the Allegation/Concern	
If substantiated would the allegation amount to gross misconduct?	<b>Yes/No</b> Details:
Has an initial assessment been undertaken?	<b>Yes/No</b> Details:
Has the case been discussed with the Council's safeguarding team if the allegations raise concerns about the safety of children and adults at risk?	<b>Yes/No</b> Details:
Is there any risk to service users, the employee, or other employees as a result of the employee remaining in post?	<b>Yes/No</b> Details:
Is the presence of the employee likely to hinder or interfere with the	<b>Yes/No</b> Details:

disciplinary investigation or damage or remove evidence?	
Is there a risk that the employee will or attempt to damage goods, property or data belonging to the Council?	<b>Yes/No</b> Details:
Is it possible for the employee to work in different location or undertake different duties without triggering the risks as set out above?	<b>Yes/No</b> Details:
Can the risk be managed or mitigated?	<b>Yes/No</b> Details:
Has the matter been discussed with HR Business Partner?	<b>Yes/No</b> Details:
<b>Decision to suspend:</b>	<b>Yes/No</b>
<b>Rationale:</b>	
<b>Corporate Director Signature</b>	
<b>Date</b>	

**DISCIPLINARY APPEAL FORM**

This form should be completed by an employee when indicating a decision to appeal the outcome of a disciplinary hearing. The form should be received by the Group Manager (HR/OD) within 14 calendar days of receiving the outcome letter following the hearing. Arrangements can then be made for the appeal hearing in accordance with section 3 e. of the Policy. You will be notified separately of the details of the hearing.

<b>Name</b>		<b>Job Title</b>	
<b>Address</b>		<b>Email</b>	

Please indicate your grounds for appeal by referring to one or more of the sections below.

**My appeal is based on the fact that:**

<b>A</b>	<b>The disciplinary procedure was not followed fairly</b>	<b>YES/NO</b>
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Please give further details:		
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<b>B</b>	<b>The findings of the hearing were unfair based on the evidence presented</b>	<b>YES/NO</b>
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Please give further details:		
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<b>C</b>	<b>The panel did not take into account key evidence or information</b>	<b>YES/NO</b>
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Please give further details:		
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<b>D</b>	<b>New evidence has come to light which may impact on the original decision</b>	<b>YES/NO</b>
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Please give further details:
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<b>E</b>	<b>The decision taken at the hearing was disproportionately harsh</b>	<b>YES/NO</b>
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Please give further details:
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<b>F</b>	<b>Other substantial grounds of appeal</b>	<b>YES/NO</b>
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Please give further details:
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<b>PLEASE PROVIDE ANY ADDITIONAL DETAIL: (continue on another sheet if necessary)</b>

<b>Signature of employee:</b>
<b>Date:</b>

### PROCEDURE TO BE ADOPTED AT A DISCIPLINARY AND APPEAL HEARING

1. The Chair of the Panel<sup>2</sup> will introduce those present, explain how the hearing will be conducted and check that the employee has received the relevant documentation.
2. The Investigating Officer will present their investigation report and where appropriate call relevant witnesses. In the case of an appeal, the presentation may be made by the officer who made the original determination (i.e. the Responsible Officer).
3. The employee and/or their representative will have every opportunity to ask any questions of the Investigating Officer and any witnesses presented as may the Chair of the disciplinary or appeals hearing and the HR Business Partner.
4. The employee will have the opportunity to respond to the allegations, present any evidence, call any relevant witnesses, and, if appropriate offer any mitigation.
5. The employee and his/her witnesses will be questioned on any aspect of their responding statement (and evidence presented) by the Investigating Officer as well as the Chair of the hearing and the HR Business Partner.
6. The employee's representative may make representations to the hearing and ask questions but should not answer questions on the employee's behalf.
7. Witnesses will be required to withdraw immediately after giving their evidence (and answering questions) and should remain separate from other witnesses waiting to give evidence.
8. The Investigating Officer and the employee (or his/her representative) will be given the opportunity to sum up at the end of the hearing but will not be able to introduce any new evidence at this stage.
9. During the panel deliberations, the Investigating Officer, the employee and his/her representative will withdraw from the hearing.
10. Having considered the issues presented, the Chair of the hearing may decide that further information is required. In such cases the hearing may need to be adjourned and reconvened to allow for that information to be sought. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
11. In communicating the outcome of the hearing, the employee should be informed of the decision taken, the reasons for that decision and their right of appeal (where this is a hearing and not an appeal hearing). This will usually be confirmed in writing within 7 calendar days of the hearing.

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<sup>2</sup> The Chair will be a Corporate Director or nominated Officer acting in the role of Responsible Officer

**PROCEDURE TO BE ADOPTED AT A MEMBER APPEAL PANEL**

1. The hearing will be held by the Council's Appeal Panel, which will be supported by one of the Council's Solicitors in the role of Clerk, a HR Business Partner and a minute taker.
2. The parties and their representatives shall be called in simultaneously before the Committee. At the start of the hearing the Chair will introduce those present and will explain the procedure.
3. The Chair of the initial disciplinary hearing (or a nominated Chief Officer) will present the management's case (acting as a Presenting Officer) calling, if appropriate, any witnesses to help substantiate or clarify any facts.
4. The appellant or his/her representative will be entitled to question the Presenting Officer and any witnesses.
5. The appellant or his/her representative will present the appellant's case calling, if appropriate, any witnesses.
6. The Presenting Officer will be entitled to question the appellant and any witnesses.
7. The Members, Clerk of the Panel and the HR Business Partner will be entitled at any time during the hearing, with the consent of the Chair, to ask questions.
8. The Chief Officer or his/her representative will be given an opportunity to sum up but will not be able to introduce any new evidence at this stage.
9. The appellant or his/her representative will be given an opportunity to sum up. He/she will not be able to introduce any new evidence at this stage.
10. All parties other than the Members of the Appeal Panel, the Legal Clerk and HR Business Partner will withdraw from the meeting. The Legal Clerk and HR Business Partner will remain in the meeting whilst the Panel require advice.
11. Once the Panel has received advice, the Legal Clerk and HR Business Partner will withdraw while the Panel consider the appeal.
12. The Panel may recall the Legal Clerk, HR Business Partner and minute-taker to clarify any points. Should the Panel require advice from the Legal Clerk or HR Business Partner both officers should be recalled together.
13. The Panel may also recall the parties to clarify any points but, if so, must recall both parties and their representatives and allow them to comment if they so wish.
14. Having considered the issues presented, the Chair of the hearing may decide that further information is required. In such cases the hearing may need to be adjourned and reconvened to allow for that information to be sought. The appellant will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

15. After the Panel has reached a decision on the appeal the parties and their representatives will be recalled and the decision announced to them together with the reasons for it. The decision will be confirmed in writing by the HR Business Partner usually within 7 calendar days of the hearing.