

## **Disciplinary Procedure** **Guidance Notes for Line Managers/ Head teachers**

**These guidelines are not exhaustive and should be used in conjunction with the Disciplinary Procedure, supplemented with advice and support from Human Resources where necessary.**

### **Contents**

	<b>Page</b>
1.0 Introduction	2
2.0 Confidentiality	3
3.0 Equality	4
4.0 Informal Resolution	4
5.0 Carrying Out a Suspension	7
6.0 Other Matters to Consider During a Period of Suspension	8
7.0 Following a Disciplinary Investigation/Hearing	9

### **Appendices**

Appendix 1: Record of Informal Resolution Pro Forma	11
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## **1.0 Introduction**

From time to time there will be occasions when it will be necessary to manage your employee's conduct where it is not meeting the standards you would expect.

The guidance notes not only cover the formal stages of the Disciplinary Procedure, but also provide advice and guidance on informal resolution, which should be considered before the formal Disciplinary Procedure is invoked.

A disciplinary procedure is an important management tool. Managers must ensure that they have read and understood the Procedure before using it for the first time so that they may identify and address disciplinary matters appropriately and in a timely manner. If an employee refers a matter to an employment tribunal, the focus will be on the manager's conduct and whether this was reasonable. Failure to follow procedures will be highlighted and will almost certainly lead to a dismissal being held unfair.

### **The purpose of the Disciplinary Procedure**

SMBC's procedure helps the Council to operate effectively, helping to maintain rules and standards of conduct at work, and provides a fair method of dealing with alleged failure to observe them. The procedure is also important because it upholds the employee's legal right to challenge the grounds for disciplinary action and the way it has been handled.

The main reason for any form of disciplinary action is to seek to bring about a positive change in the employee's behaviour, not to issue punishment. There may be times when, because of a particular act, the result of the process is purely a sanction. However, normally the motive for action should be to encourage unsatisfactory behaviour to improve.

Since the main purpose of a disciplinary procedure is to seek to improve employee conduct, as a manager you must ensure that any act of misconduct is not ignored, but dealt with promptly. This may be no more than just reminding them that they were late arriving for work, but this ensures that the employee knows what is expected of them. If an act of misconduct is ignored, it is being condoned; and the employee will not be clear that some improvement is necessary. Timely intervention may prevent further deterioration and the need for further formal action.

A manager should seek positive approaches to a problem, through informal resolution, such as counselling, setting standards, training and additional support, if they are appropriate. A decision to use the formal Procedure should only be taken if the manager is sure the matter cannot be dealt with informally. However, advice must be sought from HR before moving to the investigatory stage of the formal procedure.

Natural justice, the basis for the use of disciplinary procedures, offers three basic principles which underpin all stages of the disciplinary procedure (both informal and formal):

1. Individuals should know the standards of performance they are expected to achieve and the rules they are expected to follow.
2. They should be given a clear indication of where they are failing or breaking the rules.
3. Except in cases of gross misconduct, they should be given an opportunity to improve.

Before embarking on disciplinary action, consideration should be given to the following:

- Are the employee's standards any worse than his/her colleagues
- Does the employee know what is expected of him/her?
- Has the employee been adequately trained?
- As a manager, are you clear of what standards you expect and have the standards been communicated?
- Are you acting fairly and reasonably?

### **Causes of misconduct**

It is your responsibility as a manager to try and establish the reasons for an employee's misconduct. You should be alert to the variety of potential causes, which may not be directly work related. Possible causes may be, for example, domestic problems, ill-health, stress or alcohol addiction. These causes may not excuse the conduct, but it may change the way in which the conduct is dealt with.

It is important that managers are alert and sensitive to the possibility that the problem is health related. In which case, it might be more appropriate to deal with the concerns under the Council's Managing Sickness Absence Procedure. You should seek help for employees in such circumstances before disciplinary action is contemplated. Specialist advice and assistance is available from the Council's Occupational Health Unit.

Just because the cause is health-related does not mean it can be ignored. To do so, would be condoning the conduct and would not be helping the employee in the longer term.

## **2.0 Confidentiality**

All information relating to potential disciplinary issues must be treated in the strictest of confidence by all managers and employees. There should be no speculative gossip, nor should outcomes of interviews or meetings be unnecessarily discussed with colleagues or other managers.

All related documentation must also be stored confidentially.

Any breach of confidentiality may be regarded as misconduct and may be subject to disciplinary action.

When an employee has been suspended, it goes without saying that these situations need careful and sensitive handling, maintaining confidentiality where ever possible. You must therefore judge how much information relating to the suspension can be shared with the employee's colleagues.

The general rule should be to limit information to that which is absolutely necessary for operational reasons. In most circumstances, it would be sufficient to explain that temporarily the employee will not be at work. Explain that you are unable to give any further information at this point, but that you will update the team regarding the employee's return to work, as soon as possible. You should also remind the team that it is not appropriate to be discussing this matter any further. If any colleagues are aware of the allegations, you should try to allay fears or speculation and remind these employees that, whilst the employee has been suspended, nothing has been proved against the employee.

### **3.0 Equality**

The application of the disciplinary policy must be fair and consistent, irrespective of age, ethnicity, gender, disability, religion and sexual orientation.

An Equality Impact Assessment has identified various factors which should be given consideration throughout the disciplinary procedure to ensure that employees are not subject to a differential impact. Managers and Investigating Officers should therefore make appropriate adaptations to remove any differential impact on the grounds of the above mentioned categories, such as accessing translation services or providing employees with documents in larger font or brail, for example.

Please contact your HR Advisor for further advice.

### **4.0 Informal Resolution**

Part B of the Disciplinary Procedure outlines a best practice approach that managers should take to address minor misconduct informally, where formal disciplinary action would be disproportionate to the alleged misconduct. For example, minor misdemeanors such as bad timekeeping should be dealt with informally in the first instance.

The informal approach is a useful and effective way to address cases of unsatisfactory and minor breaches of conduct to quickly resolve the problem, thus reducing or eliminating the need for formal disciplinary action.

The disciplinary procedure states that **consideration should be given to handling matters of misconduct informally**, before referring any cases on

to the formal disciplinary procedure, unless the matter is so serious as to make formal action a necessity.

## **Representation**

As this is an informal one to one discussion, there is no right to representation at this stage of the procedure. As a manager, you are entitled to meet with the employee alone to discuss their work performance.

However, in some exceptional circumstances, you may feel that the presence of a representative may assist the process. If the employee requests representation then you may want to agree to this if you feel it will reassure the employee. It is largely a question of your judgment and knowing what will be most appropriate in that particular situation.

## **Creating a Suitable Environment**

You will need to create an environment where you and the employee can have an unhurried, confidential meeting, without interruption. It may take some planning and preparation on your part to choose a suitable time and venue.

## **During the Informal Meeting**

Raising issues of conduct with employees may generate a negative response. You need to be able to respond to such hostility in a positive and assertive way.

In some situations there may be underlying circumstances or mitigating factors contributing towards the misconduct. People do not find it easy to volunteer the fact that they have problems which are affecting their work and they may not have yet admitted to themselves that there is a problem. You should be sensitive to changes in behaviour which may be affecting the individual's conduct or relationship with colleagues.

When handling matters informally, as per the 'Good Management Practice' section (part B of the Disciplinary Procedure), you must ensure that:

- The employee is given a copy of the Disciplinary Procedure
- The meeting is a two way discussion, aimed at explaining the shortcomings in the employee's conduct and encouraging an improvement. Criticism should be constructive, with the emphasis being on finding ways for the employee to improve and for the improvement to be sustained.
- You are able to show the employee examples of their unsatisfactory conduct. This may be 'hard evidence' such as records of lateness or poor time keeping. Such evidence will justify your concerns and legitimise your intervention.

- You listen to whatever the employee has to say about the issue. It may become evident that, actually, there is no misconduct. If so, make it clear to the employee that the matter will end there.
- Where an improvement is required, make sure that the employee understands what is expected of them, how their conduct will be reviewed, and over what period.
- The employee is told (and understands) that if there is no improvement or insufficient improvement, the matter may be referred to the formal stage of the Disciplinary Procedure.
- Consideration is given to any need for any counseling or training, if applicable.
- You keep brief notes of the meeting and any agreed actions.

During the meeting you should also ensure that any informal action does not turn into formal disciplinary action, as this may unintentionally deny the employee of certain rights, such as their right to representation. If during discussions it becomes obvious that the matter may be more serious and should be handled under the formal disciplinary procedure, the meeting should be adjourned immediately, and the employee should be informed that the matter will be continued under the formal disciplinary procedure.

### **Following the Informal Meeting**

Following informal action, the line manager/ head teacher should summarise the discussion (and agreed actions/review date, if applicable) in writing on the Council's 'Record of Informal Resolution' pro forma (available from appendix 1).

A copy of the completed pro forma should be kept by the line manager/ head teacher on the employee's local supervision file and a further copy should be provided to the employee to ensure that all parties understand what is expected of them.

The pro forma should **not** be copied to HR (with the exception of allegations relating to vulnerable groups, where details of informal disciplinary action relating to vulnerable groups should be held on the employee's personnel file in line with the Council's safeguarding responsibilities), as this is informal action, and there is no right of appeal.

Furthermore, informal action should **not** be mentioned in references (again, with the exception of allegations relating to vulnerable groups).

Between the informal meeting and the review date, conduct must be monitored closely to review the employee's progress over the specified period. As the review date approaches you should take time to prepare for this meeting. Check the evidence available, to see if agreed levels of improvement have been achieved.

If there has been an improvement in conduct, give praise here. However, If informal resolution fails to achieve or sustain an improvement in behaviour to

the required level, then you may need to resort to the formal procedure. Where you have counselled an employee but their conduct fails to improve, if you choose to do nothing more, you will have condoned that conduct. Formal action is often a difficult 'next step' to take, but is unavoidable if the Informal Resolution processes have not had the desired effect.

Advice should be sought from Human Resources before moving in to the investigation stage of the formal disciplinary procedure.

## **5.0 Carrying out a Suspension**

Suspension is not intended to be punitive, and nor is it a means of removing a "problem employee". Suspending an employee can help to ensure that an unhindered investigation can take place and can prevent any further risk to the employee and/or service user.

### **Timescales**

Any such suspensions should only be of limited duration. It may be that the employee is only suspended for a very short period until an alternative work-place or alternative suitable job is secured.

### **Who carries out a suspension?**

Where a decision is taken to suspend, it is the responsibility of the line manager/ headteacher to confirm the suspension with the employee.

In the event that it is felt that suspension is the only appropriate option, all line managers/Head teachers/Governors have the power to suspend an employee. However, they must contact HR first, and must also ensure that authority is sought from the relevant senior figure (see the Disciplinary Procedure for details).

It is also advisable for managers to have an appropriate witness present when the suspension is carried out, just in case at a later date there is a dispute over the procedural fairness of the suspension.

If an incident occurs outside normal office hours and a senior figure is not available to authorise a suspension, the employee should be asked to go home whilst the various options are thought through and the appropriate advice and authorisation sought. Issues of security should still be considered under these circumstances (i.e. you may need to collect the employee's keys to the building/ID access card etc).

### **Right to representation**

There is no right to representation at the point of suspension, and representation would normally be inappropriate, as this could lead to delays in suspending the employee. However, there may be exceptional circumstances where it is agreed by HR that the employee can have representation.

## **What to cover during a suspension meeting**

HR will provide you with a checklist of items which you should cover when an employee is being suspended, which includes:

- The reasons why they are being suspended (the allegations). You do not have to be precise about the exact allegations at this point but it is reasonable to give the employee an indication of the nature of the misconduct.
- If applicable, that if substantiated, the allegations may amount to gross misconduct and may lead to their dismissal
- The suspension is without prejudice and is not disciplinary action in itself.
- They have a right to representation throughout the formal procedure
- That an investigating officer will be appointed, who will contact the employee shortly
- That they should stay away from the workplace and not discuss the matter with any colleagues or clients. You should explain that this is to protect their interests and that the investigating officer will agree arrangements with them for access to witnesses, as required, to prepare their case.
- That the employee will receive full pay during the period of suspension, providing that they make themselves available during proceedings (unless HR have advised otherwise)
- That the investigation will be concluded as quickly as possible, usually within 15 working days.

The employee should be given a copy of the Disciplinary Procedure at this meeting. You should also collect any equipment such as their work laptop, keys to buildings, ID access cards etc from the employee.

Do not get drawn into discussions or arguments at the suspension meeting, but explain to the employee that they will get an opportunity to give their account of events to the Investigating Officer in due course. Only if the employee provides you with concrete evidence that the incident did not take place or that it was impossible for the employee to have committed the misconduct, because for example they were out of the country on the relevant date (which should have been checked prior to deciding to suspend) should the suspension be abandoned.

## **Confirmation of the suspension**

HR will provide you with a letter which you will need to send to the employee to confirm the suspension in writing, within three working days from the date of suspension.



## **6.0 Other Matters to Consider During a Period of Suspension.**

### **Employee support**

Regular contact should be maintained with the employee throughout the suspension, to ensure they are well informed of the progress of the investigation. Any decision to suspend must also be kept under review.

Furthermore, if, after a period of suspension, an employee is reinstated with no case to answer, time must be taken to support them back into work. This is particularly important for employees where relationships with customers may have to be re-established. Consider whether IT access needs to be reinstated, and whether the employee requires a hand over to update them on what work has been completed while they have been away from the workplace and by whom.

### **Managing annual leave and sickness**

During a period of suspension, employees should book annual leave or report sickness absence in the normal way.

For prior booked annual leave, employees on suspension may ask you to honour annual leave commitments which fall during their suspension. Technically, the whole contract has been suspended and, therefore, entitlements to annual leave have been suspended. However, it makes sense to take a pragmatic approach. If the employee has pre-booked their annual fortnight's holiday, for example, there is little point insisting that they cancel.

### **Workplace contact**

It is not appropriate for a suspended employee to contact their workplace. Obviously, it would be inappropriate to stop a suspended employees having contact with colleagues outside of work during a period of suspension, as some colleagues may be friends outside of work, or even family. The key is that the employee must not discuss any of the issues relating to the investigation with anyone, other than those involved in the investigation (their representative and the investigating officer). Should the employee wish to arrange to call a witness in relation to their case, you should refer them to the investigating officer, who can arrange access to the witness.

### **Arrangements for managing work in the employee's absence**

You should check with the employee regarding whether there are any urgent matters that you should be made aware of that may need to be dealt with during the period of suspension.

Arrangements should also be made by management for dealing with incoming work in the employee's absence, including putting an 'out of office' message on the employee's e-mail account if applicable, to advise customers that their

e-mail will not have been received and to confirm where to redirect their e-mail so that it can be picked up by someone else.

## **7.0 Following a Disciplinary Investigation/Hearing**

Following an investigation, even where it is found that there is no case to answer, the investigating officer may devise an action plan or recommendations, to prevent further reoccurrences or to make improvements to related process. As the employees line manager/ headteacher, you may be responsible for implementing some or all of the aspects of the action plan (i.e. Training or counseling).

Following a Disciplinary Hearing, where an employee has been dismissed, you will need to ensure that any outstanding annual leave is paid to the employee (pro rata) by informing your HR Advisor of any days owing to the employee.

Equally, if the employee has taken more annual leave than they were entitled to on a pro rata basis, you will need to notify HR so that the leave owing can be claimed back.

You should also refer to the Leavers Checklist (available on the intranet), to ensure that all Council property, including access passes, Council Laptops etc are returned.

Record of Informal Disciplinary Resolution

Employee Name:

Date of Meeting:

Summary of conduct under review:

Employee's explanation:

Manager/ Headteacher's confirmation of expectations and required standards:

Agreed Action Plan (if applicable):

*This may include setting objectives and appropriate support such as counselling, training etc.*

Review Date:

Employee's Signature:

Manager's Signature:

***Informal resolution does not constitute formal disciplinary action. However, employees should be aware that where an improvement in conduct is not achieved or sustained, this may lead to formal disciplinary action.***

***A copy of this document must be provided to the employee.***