



Disciplinary

1 Introduction

The aim of this procedure is to ensure the fair and consistent treatment of employees in all matters of discipline and dismissal, and to enable managers to influence the conduct of employees. This in turn will assist the Council/School to operate more effectively.

This Procedure is supplemented by a guidance document for Managers and letter templates.

The Capability Procedure should be used where an employee fails to meet the standards required of them in relation to their job performance, and the Absence Management Policy should be used where employees fail to meet the required level of attendance at work.

2 Scope and Principles

This Policy applies to all employees of South Tyneside Council, (with the exception of the Chief Executive, Directors and the Monitoring Officer for whom separate procedures apply) including school-based employees where the governing bodies of individual schools have adopted the Policy.

This procedure does not apply to the expiry of a fixed term contract and/or an employee leaving on the grounds of redundancy. Employees within their probationary period are also excluded from the scope of this policy.

Although normal standards of conduct apply to nominated trade union officials, no formal disciplinary action should be taken against them, without reference to the Corporate Lead, HR Services, and the appropriate trade union full-time official.

Minor issues of misconduct can be dealt with informally by the line manager. Formal disciplinary action may be taken in the future if standards do not improve.

Except for issues deemed to be gross misconduct, an employee will not be dismissed for a first act of misconduct. The procedure identifies the stages that should be followed and gives time scales for employees to improve their conduct.

Where there are child protection/vulnerable adult concerns, and/or criminal offences are suspected, these procedures may take precedence and a disciplinary investigation may be delayed. However, where possible to do so an internal investigation will commence at the same time. If it is reasonable to dismiss, the employment will be ended without waiting for the outcome of any criminal proceedings.

Investigations should be prioritised and where possible completed within 28 working days. Where due to unforeseen circumstances this is not possible, the employee will be made aware of the delay.

In certain circumstances it may be appropriate to implement disciplinary action short of dismissal outside the full Disciplinary Policy and Procedure, but only where there is acknowledgement of responsibility by the employee and genuine mutual agreement. (See section 11 of this policy)

Employees have the right only to be accompanied by a recognised trade union representative or a Council/School work colleague (not a family member) at each stage of the procedure. A nominated colleague cannot already be part of the investigation. It is the employee's responsibility to make his or her own arrangements for representation. If the nominated representative is an employee of the Council/School, then reasonable time off will be allowed for a pre-meeting and to attend the hearing itself.

3 Suspension of Employment

Suspension is not a disciplinary action but may be necessary to allow a full and fair investigation to be carried out. A decision to suspend is not an indication that any decision has been made about the outcome of the investigation. It is usually necessary in all cases of alleged gross misconduct. Alternatives to suspension should always be considered, for example thought should be given to moving the employee to another establishment or giving the employee alternative duties so that they can remain at work whilst investigations are carried out. If a manager decides that suspension is the only option, the reasons for this must be recorded on the Disciplinary Policy – Employee Suspension Record Form. During the period of the suspension, the employee will receive full basic contractual pay.

Employees do not have the automatic right to be represented at the meeting where suspension occurs, however representation will be allowed if the individual is able to organise it in time.

Throughout the period of suspension an employee must not undertake any other form of employment, paid or otherwise, during their contractual hours with the Council/School.

An employee who is suspended must be available to attend meetings at the request of the Council/School.

Where an employee is suspended and subsequently notifies the Council/School that they are unwell, normal notification/medical certification requirements will apply. Such absence will count against the employee's occupational sick pay entitlement and their absence record. The submission of fit notes however does not supersede the decision that the employee is suspended, and the disciplinary process will continue.

If a recognised trade union official is suspended the HR Advisory Team must be informed as soon as possible. A senior branch officer or full-time official of the appropriate union must then be informed, either by the appropriate manager or by reference to the Corporate Lead, HR Services.

4 Investigation

Following an allegation, before any decision is taken to hold a disciplinary hearing, a management interview/investigation must be conducted. At that interview, the employee must be given an opportunity to respond to the allegations and give explanations as appropriate. At the conclusion of the investigation the employee will be informed if they are required to attend a disciplinary hearing, or if no further action will be taken.

5 Witnesses

Some employees may be reluctant to provide evidence during an investigation or at a disciplinary hearing. The investigating officer should explore why an employee is reluctant to give evidence, provide reassurance and seek to resolve any concerns they have.

An employee must attend an investigation meeting or a disciplinary hearing as a witness if invited which is a reasonable management request. Failure to do so could result in disciplinary action.

The Council/School will not tolerate bullying or intimidation of witnesses. If an employee is suspected of intimidating a witness, an investigation will be undertaken, and disciplinary action may be taken against them.

6 Monitoring and Surveillance at Work

CCTV cameras which are installed in public places, and in places which might be restricted to staff only, can be used in any investigations which are deemed to be necessary. This will also include any information gathered from body worn cameras. The evidence gathered from such cameras may also be used in any subsequent disciplinary hearings which then follow.

7 Disciplinary Hearing

The employee must be informed of the arrangements for the disciplinary hearing, i.e., time, date and venue, in writing at least 5 working days in advance of the hearing. The letter must also clearly state the allegation(s) to be considered and include the pack of information comprising statements and supporting documents prepared for the disciplinary hearing.

The employee or their representative must submit any documentation that they will rely on in the hearing to the Hearing Officer/Appropriate Governing Body Committee at least 2 working days prior to the hearing. A copy will then be given to the Investigating Officer.

Timescales for the provision of the hearing pack and/or employee submissions prior to the hearing may be extended by mutual agreement. This may be necessary in more complex cases or where there is a significant amount of evidence to consider.

The right to be accompanied by a recognised trade union representative or Council/School work colleague (not a family member) must be made clear to the employee. This must be done in advance of the hearing and again at the hearing itself if an employee attends unaccompanied. If management believe the choice of person to accompany the employee is not appropriate, they will be asked to nominate a different representative/colleague. The manager will clearly explain the rationale for the request to nominate an alternative representative.

The role of the HR representative is to provide advice and guidance throughout the process. It is therefore likely that the same HR representative may be present throughout the investigation and/or hearing.

A solicitor may only accompany an employee at the disciplinary hearing if the conduct, if proven, could result in the employee's dismissal and if, as a result of a dismissal, the employee could be prevented from working in that field of employment again. This would only apply to professions where they are regulated by a professional body and the regulated body relies on the Council's/School's conclusions to a particular case. Legal advice should be obtained if a request of legal representation is made. However, where the regulated body carries out its own investigation into the facts, independently of any decision reached by the Council/School, then the employee may not be entitled to legal representation.

Where the employee is unable to attend a disciplinary hearing and provides a good reason for failing to attend, the hearing will be adjourned to another day. Unless there are special circumstances militating against it, if the employee is unable to attend the re-arranged hearing, then this will take place in the employee's absence. The employee's work colleague or recognised trade union representative may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation.

If the recognised trade union representative or work colleague is unavailable on the day of the hearing it may be re-scheduled. The employee must provide a proposed new date that falls within five working days of the original date. If this alternative time is not convenient for management, the hearing will go ahead as planned on the original date unless there are exceptional circumstances.

It is the Council's/School's aim to conclude disciplinary proceedings as soon as possible. Where an employee produces a fit note and indicates that they are unfit to attend the hearing, it will be the Council's/School's intention that the hearing goes ahead on the original date and the employee can be represented by the recognised trade union representative or work colleague, or a written statement can be submitted. It is the employee's responsibility to make sure their representative is well briefed and able to

give evidence on their behalf.

The outcome of a disciplinary hearing must be confirmed in writing to the employee within 5 working days.

When a warning is issued it will commence immediately, however, time taken as sickness absence does not count towards the overall duration of a disciplinary warning. Other absence from work also may not count however this will be considered on an individual basis.

8 Outcomes

- **Stage 1 – written warning**

In situations of misconduct, employees may be issued with a formal written warning. A record of the warning must be retained for 6 months during which the employees conduct must be monitored.

- **Stage 2 – final written warning**

If an employee commits a further act of misconduct during the period of the written warning or the misconduct is regarded as more serious, then a final written warning should be issued. A record of the warning should be retained for a period of 12 months during which the employee's conduct must be monitored.

In exceptional circumstances the duration of the warning can be extended to 24 months. This would be an alternative to dismissal and can only be issued following a formal disciplinary hearing.

- **Repeated Misconduct** - If an employee has previously been through the disciplinary process and been issued with a formal warning, the warning will expire at the appropriate time in line with policy above. However, should the individual repeat misconduct, after the warning has expired, the behaviour which led to previous warnings being issued may still be taken into consideration when deciding which sanction is appropriate for any subsequent offences.

- **Stage 3 - dismissal**

If an employee commits a further act of misconduct during the period of the final written warning, or the employee commits a very serious act of misconduct, then the employee should be dismissed. In exceptional circumstances a 24-month warning can be given as an alternative to dismissal.

Dismissal for repeated misconduct occurs when an employee has been repeatedly warned about their acts of misconduct. In most cases the above stages will have been followed before dismissal is considered. The employee is entitled to pay in lieu of appropriate notice.

Dismissal for gross misconduct is immediate and without notice. It is misconduct so serious as to destroy the contractual relationship between the employee and employer. The employee must be suspended if the alleged misconduct is considered to be so serious. Examples of what would be classed as gross misconduct is included in the guide for managers document.

- **Demotion**

Permanent demotion to another post is an alternative to dismissal. The post, if one is available, will be at a lower level of responsibility. There will be no pay protection arrangements, travel expenses or other costs incurred payable as a result of a demotion or disciplinary related transfer. Confirmation of demotion must include a final written warning with terms as outlined in Stage 2 of the procedure.

9 Right of Appeal

Employees have the right of appeal against decisions taken at all stages of the procedure.

If an employee wishes to appeal against a formal warning, they must do so in writing, to the appropriate Director within 10 working days upon receipt of the letter confirming the warning. For school-based employees, any appeal should be made, in writing, to the Clerk to the Governing Board. The appeal letter must include the full grounds upon which the employee is appealing and any relevant documentation which will be relied upon within the appeal

The appeal may either be a review of the disciplinary sanction or a re-hearing depending on the grounds for appeal, and this will be decided by a different manager to the original Disciplinary Hearing Officer.

10 Appeals Against Dismissal

If an employee wishes to appeal against dismissal, they must do so in writing, to the appropriate Director within 10 working days upon receipt of the letter confirming the dismissal. The appeal letter must include the full grounds upon which the employee is appealing and any relevant documentation which will be relied upon within the appeal. The Director will then notify the Corporate Lead, HR Services and the Head of Legal Services. The latter will arrange a meeting of the Council's Appeals Panel, which will hear the appeal. The employee may submit further relevant documentation for consideration by the panel prior to the date of the hearing.

For school-based employees, any appeal should be made, in writing, to the Clerk to the Governing Board.

The Appeals Panel will conduct a full re-hearing, without unreasonable delay. The decision reached is final.

11 Disciplinary Action outside the full procedure (short procedure)

Occasions will arise where it may be possible to take disciplinary action outside of the full procedure.

This should not be regarded as normal practice but can be considered when an employee is made aware of the outcome of a formal investigation, accepts responsibility for their conduct and is prepared to accept a formal warning without the full hearing process.

Such action can save a considerable amount of time and stress for all the parties concerned whilst also achieving the purpose of a disciplinary warning which is to correct an employee's behaviour and move forward.

However, it is essential that due process is followed in accordance with these guidelines to avoid accusations of unfairness or undue pressure, subsequent misunderstandings or appeals. Additionally, a full investigation should have been completed and the employee given the opportunity to state their explanations.

This process is not appropriate if the allegations are considered to be of gross misconduct with dismissal as a potential outcome of disciplinary action.

If, however, during the process, an individual offers their resignation its acceptance can be considered, depending on the circumstances.

The employee must be advised of their rights to a full hearing and be given a copy of the full procedure with explanation as necessary. They should be asked to confirm their understanding. If they confirm that they want to proceed using the short procedure a meeting will be held to discuss the evidence and proposed penalty.

Under the short procedure an investigating officer may only propose a written warning, for 6 months, or a final written warning for 12 months as a sanction. This would be dependent on the specific circumstances of the case.

If there is agreement to the proposed sanction, management must confirm in writing to the employee the facts of the case and the process that has been followed including the date of the meeting, those present, the information and advice given about the employee's rights under the full procedure and their understanding of these and the agreed penalty.

The employee must be given the opportunity to consider the letter and take further advice before formally confirming their agreement in writing to that effect. A maximum period of 10 working days should be allowed for further advice and consideration.

The agreed warning may then be taken into account in any subsequent disciplinary process up to the time limits specified in the full procedure. The warning period will begin from the date the employee signs the agreement.

12 Equality and Diversity Statement

South Tyneside Council and Governing Boards are committed to promoting equality and valuing diversity. An equality check on this policy was carried out in April 2022 and no equality check implications were identified.

Policy approved by Governors: March 2023

Date of next review by Governors: February 2024
