

# **FAREHAM**

## **BOROUGH COUNCIL**

**FAREHAM BOROUGH COUNCIL**

### **CODE OF CONDUCT AND DISCIPLINARY RULES AND PROCEDURE**

July 1994  
Amended June 1995  
Revised October 1998  
Revised December 2008

**FAREHAM BOROUGH COUNCIL****CODE OF CONDUCT AND DISCIPLINARY RULES AND PROCEDURE  
INDEX**

<b>Section</b>	<b>Content</b>	<b>Page No(s)</b>
<b>1.</b>	<b>FOREWORD</b>	<b>1</b>
<b>2.</b>	<b>PERFORMANCE STANDARDS</b>	<b>2 - 3</b>
<b>3.</b>	<b>SCOPE OF THE PROCEDURE</b>	<b>4</b>
<b>4.</b>	<b>INTRODUCTION TO CODE OF CONDUCT, DISCIPLINARY RULES AND PROCEDURE:</b>	<b>5 - 6</b>
	Preamble	5
	Introduction	5
<b>5.</b>	<b>CODE OF CONDUCT</b>	<b>7 - 19</b>
	General conduct	7
	Conduct towards others	7
	Proper conduct of the Council's business	9
	Confidentiality and Disclosure of Information	13
	Tendering	14
	Outside interests	15
	Sponsorship	16
	Off-duty Hours	17
	Gifts and Hospitality	17
<b>6.</b>	<b>INTRODUCTION TO DISCIPLINARY RULES AND PROCEDURE:</b>	<b>20 - 26</b>
	Principles	20
	Authority to Act	22
	General Responsibilities	22
	Disciplinary Rules	23 - 26
<b>7.</b>	<b>DISCIPLINARY PROCEDURE</b>	<b>27 - 38</b>
	Introduction	27
	Day to day supervision of employees	27
	Preliminary investigation and consideration	28
	Suspension pending investigation	29
	Dealing with Police Investigation, Criminal Activity or Conviction	30
	The Disciplinary Hearing	30
	Disciplinary Action	33
	Appeals	35
	Disciplinary Records	37
	Amendment to time limits	38
	Review	38
<b>Appendices</b>		
<b>1.</b>	Performance Indicators	<b>39 - 40</b>
<b>2.</b>	Levels of management authorised to act under the disciplinary procedure	<b>41</b>
<b>3.</b>	Procedure at Disciplinary & Appeal Hearings	<b>42 - 43</b>

## **SECTION 1 - FOREWORD**

It is Fareham Borough Council's philosophy to treat all employees fairly and equitably. As part of that approach, it is important to provide guidance as to the standard of conduct which the Council expects of its employees to assist them in their day-to-day work and to have a set of disciplinary rules and procedures to promote order in the treatment of employees and in the general conduct of the Council's employment relations.

As a general principle, all employees are expected at all times to act in the best interests of the Council and to refrain from any actions which might impinge on the general obligations of the employer/employee relationship. Disciplinary rules set standards of conduct considered necessary in the work situation, procedures help ensure these standards are adhered to, provide a fair method of dealing with alleged failures to observe them and ensure corrective action is taken.

Discipline in employment is concerned not only with a disciplinary procedure, but with a system of rules that if breached, can lead to that procedure being invoked. The maintenance of discipline is among the most important responsibilities of managers and supervisors. Without it, instructions may not be followed, motivation and efficiency will deteriorate and productivity is likely to decline.

The Council expects all employees to conduct themselves in a way that ensures that standards of service and the reputation of the Council are maintained. An employee is required to observe the conditions of service laid down by national and local agreements which are supplemented by the Council's Code of Conduct and Disciplinary Rules.

A clear Code of Conduct and Disciplinary Rules also protects employees from misunderstandings and criticism by setting standards and ensuring that employees know what is required of them.

This Code of Conduct and Disciplinary Rules and Procedure provide a fair and structured means of addressing issues relating to conduct at work.

## **SECTION 2 - PERFORMANCE STANDARDS**

### **Purpose**

1. To meet statutory obligations and the requirements of the Council's Disciplinary Rules and Procedure.
2. To enable standards of conduct to be specified and monitored fairly and effectively.
3. To promote fairness, consistency and order in the conduct of disciplinary matters.
4. To inform employees of the conduct the Council expects from them and to assist them to maintain the desired standards.

### **Standards**

5. Managers must ensure that:
  - they apply the Council's Code of Conduct, Disciplinary Rules and Procedure consistently and in full and that they comply with statutory requirements;
  - the Code of Conduct, Disciplinary Rules and Procedure and individual rights are brought to the attention of all employees under their responsibility;
  - authority is clearly devolved to designated individuals to implement the disciplinary process, including dismissal;
  - management action taken in accordance with the procedure is fair, unbiased and consistent.
  - all Disciplinary Hearings are conducted confidentially, fairly and in accordance with the procedure;
  - accurate notes are kept of all formal disciplinary investigations and hearings and treated as confidential;
  - cases of misconduct, must be dealt with through the disciplinary procedure, and distinguished from cases of incapability, either due to ill health or lack of skill or aptitude, which should be dealt with separately.
6. Employees must:
  - conduct themselves in a way that is consistent with the high standards of service and the good reputation of the Council;
  - comply with conditions of service laid down by national and local agreements;

- comply with the Council's Code of Conduct and Disciplinary Rules and Procedure.

## **Legal Requirements**

7. The Employment Act 2002 contains provisions relating to the resolution of disputes in the workplace. These are expanded upon and developed in Dispute Resolution Regulations 2004.
8. The Employment Rights Act 1996, (formerly the Employment Protection (Consolidation) Act 1978), sets down the requirement for the employer to act reasonably when dealing with disciplinary cases. Employees must generally have one years' service to qualify for the right to pursue unfair dismissal claims. There is, however, no service requirement for claims against dismissal in certain circumstances for example taking part in trade union activities or being (or not being) a union member; or for claims of discrimination.
9. Employment Tribunals will take account of the guidance in the ACAS Code of Practice Disciplinary and Grievance Procedures and extensive case law in the interpretation of the statutory provision. Copies of the Code are available from Personnel Services or on line at [www.acas.org.uk](http://www.acas.org.uk)

## **Performance Indicators**

10. To further enhance the consistency and fairness of application of this Procedure performance will be monitored against the indicators set out in Appendix 1

## **Reference Documents**

ACAS "Code of Practice 1 on Disciplinary and Grievance Procedures"

Employment Act 2002

Employment Act 2002 (Dispute Resolution) Regulations 2004

Employment Rights Act 1996

Local Government and Housing Act 1989

Local Government Act 2000

Model Code of Conduct for Local Government employees

### **SECTION 3 - SCOPE OF THE PROCEDURE**

1. The Code of Conduct applies to all employees of Fareham Borough Council and the Disciplinary Rules and Procedure applies to all employees of the Council with the exception of:
  - The Chief Executive Officer, Monitoring Officer and Section 151 Finance Officer. (see Note 1)
  - Employees serving a probationary period subject to the total duration, including the notice period, being less than 12 months.
  - Cases of redundancy for which a separate procedure exists.
  - Employees working on a casual basis, subject to any one period of continuous employment not exceeding one year.
  - Employees on temporary and short term contracts of less than one year.
  - Termination due to incapability; incapability due to ill-health and incapability due to lack of skill or aptitude for which separate procedures exist. (See Note 2)
  - Resignation by the employee, or other termination by mutual consent.

#### **NOTES:**

1. The Local Authorities (Standing Orders) (England) Regulations 2001 require a local authority to conform with its provisions for disciplinary action in respect of these officers. Accordingly the Council's Standing Orders set out the disciplinary process to be followed. This process is consistent with normal disciplinary standards, providing for investigation, suspension, disciplinary hearing and appeal.
2. These situations will be dealt with initially within the Capability Procedure.

## **SECTION 4 - INTRODUCTION TO CODE OF CONDUCT, DISCIPLINARY RULES AND PROCEDURE**

### **Preamble**

1. The Council's Code of Conduct, Disciplinary Rules and Procedure aim to establish and maintain appropriate standards of conduct at work; promote fairness, consistency and order in the treatment of its employees, and support a healthy and harmonious working environment, through the application of fair and effective management of disciplinary matters.
2. As a formal approach, the main purpose of the Council's Code of Conduct, Disciplinary Rules and Procedure is to encourage an improvement in an employee whose conduct is unsatisfactory. The Council's policy is to ensure that effective arrangements exist for dealing with disciplinary matters and that, as far as possible, common standards are observed for all employees. It must be seen as an attempt to secure improvement in conduct, to treat employees in a fair and consistent manner and to provide a procedure so all parties know what to expect.
3. It is important that management, employees and their representatives accept responsibility for maintaining standards of conduct when carrying out their duties, not only for their own interests but also in the interests of the Council and the communities it serves.

### **Introduction**

4. The Council expects all its employees to conduct themselves in a way that ensures that standards of service and the reputation of the Council are maintained. An employee is required to observe the conditions of service laid down by national and local agreements, which are supplemented by the Council's Code of Conduct and Disciplinary Rules & Procedure. A clear Code of Conduct and Disciplinary Rules & Procedure also protects employees from misunderstandings and criticism by setting standards and ensuring that employees know what conduct is required of them.
5. Any breach of the Code of Conduct and Disciplinary Rules can lead to action being taken against the employee concerned in accordance with the Disciplinary Procedure. Where appropriate, warnings will normally be given. In cases of persistent misconduct and after a final written warning, an employee may be dismissed with notice or be subject to other disciplinary action as an alternative to dismissal. More serious breaches of the Code of Conduct and Disciplinary Rules will be treated as gross misconduct. Gross misconduct means conduct where the Council cannot tolerate the continued presence of the employee at work. Subject to any mitigation, gross misconduct will lead to an employee being dismissed without notice.
6. In addition to this Code of Conduct and Disciplinary Rules there are Council Policies and Procedures, financial regulations and standing orders which dictate the way that the Council operates. Management may issue further rules from time to time either in writing or by oral instruction (oral instructions should be recorded by management). Failure to observe the Code of Conduct

or any of the Disciplinary Rules, regulations, standards and orders may lead to disciplinary action. If this is taken, it will be in accordance with the Council's Disciplinary Procedure.

7. A copy of this Code of Conduct, Disciplinary Rules and Procedure will be supplied to all employees who will confirm in writing that they have received them. Managers will take steps to ensure that all employees understand the rules and management requirements in respect of standards of conduct and the observance of working procedures, operational regulations, safety rules and regulations, standing orders, etc.
8. Employees will be expected, through agreed procedures and without fear of recrimination, to bring to the attention of the appropriate level of management any deficiency in the provision of service. Employees must report to the appropriate manager any impropriety or breach of procedures.
9. If there is anything in this document that employees do not understand they should seek the advice of their manager.



## **SECTION 5 - CODE OF CONDUCT**

### **Introduction**

1. This Code of Conduct sets down a set of “core principles” which underpin the Council’s concept of public service.

### **General Conduct**

2. Employees are expected to conduct themselves at all times in a manner that will maintain public confidence in both their integrity and the services provided by the Council. This includes the avoidance of personal gain from the use of public funds. All employees are expected to behave at all times in a reasonable way towards other employees, the Council, its partners and the public generally. A clear code of conduct protects employees from misunderstandings and criticisms by setting standards and ensuring employees know what conduct is required of them.
3. In general what an employee does while not at work is his/her personal concern subject to the conditions at paragraphs (34 - 41 & 44) but an employee shall at all times, while at work, endeavour to ensure value for money to the local community, operate proper stewardship of public funds and where it is part of their duties, to provide appropriate advice to Councillors and other employees impartially. Employees must observe the requirements of the law; the standing orders of the Council and Committees, comply with the requirement to register or declare interests, gifts and hospitality and comply with the Council's Policies, Procedures, Rules and Regulations pertinent to their job, and the rules contained within this document (copies are available on the Council’s Intranet). The Register of Gifts, Hospitality & Interests is available through an e-work form on the Intranet or from your Manager.
4. Failure to observe the minimum standards and requirements that should apply as set out in this Section could result in allegations of potential gross misconduct as exemplified in Section 6 paragraphs 16 - 18 or misconduct, Section 6 paragraph 19.

### **Conduct Towards Others**

5. Whilst carrying out his/her duties or acting as a representative of the Council, an employee shall not:
  - (a) Act in an oppressive, abusive or rude manner, use threatening/offensive language or take action likely to cause offence, towards another employee, manager, Councillor, other work contacts or member of the public nor by word, act, or demeanour, abuse the authority vested in him/her, or be insubordinate to his/her supervisor or any other level of management.
  - (b) Disregard the Council’s code of practices for ensuring Equality of Opportunity in Employment and Dignity at Work or unlawfully discriminate against or harass another employee, Councillor or member of the public, or incite another individual to do so, on any grounds including those of gender identity or gender reassignment,

social/economic status, race, national and or ethnic origin, colour or religion, marital status, disability, age, sexual orientation, physical or sensory impairments, learning disabilities, HIV status, or other personal characteristic. All employees are required to observe the law and the policies of the Council regarding non-discrimination.

- (c) 'Harassment' is regarded as objectionable and/or offensive comments, actions, conduct, materials, suggestions, jokes or physical contact, unrelated to the requirements of an individual's or group's job, and has the potential to create an intimidating and unpleasant working environment and would include:
- physical assault, threats or intimidation;
  - bullying;
  - unwanted sexual advances – touching, standing too close;
  - spreading malicious rumours or insulting someone (particularly on the grounds of age, race, sex, disability, sexual orientation and religion or belief)
  - copying memos/forwarding electronic mail that are critical about someone to others who do not need to know;
  - unfair treatment;
  - overbearing supervision or other misuse of power or position;
  - making threat or comments about job security without foundation;
  - deliberately undermining a employee by overloading and constant criticism;
  - derogatory language, remarks, jokes, or statements (oral or written), also conduct and actions, either formal or informal, which ridicules, abuses, degrades, or insults individuals or groups of people;
  - displaying or distributing within Council premises or vehicle any material such as leaflets, posters or magazines, which are degrading or offensive. This includes graffiti, the display of "pin up" pictures and electronic graphics e.g. Screen savers;
  - exclusion or victimisation of, or discrimination against, any employee, Councillor or member of the public who has made or is contemplating making a complaint or who has provided or is contemplating providing information to management about discrimination or any other disciplinary offence.
- (d) Be involved in any appointment to the Council where he or she is related to the applicant or has a close personal relationship with him or her. Employees involved in appointments should ensure that these are made

on the basis of merit. It would be unlawful for an employee to make an appointment, which was based on anything other than the ability of the candidate to undertake the duties of the post.

A manager must inform his/her Senior Manager if they are aware that a friend or relative is applying for a job with the Council. He/she must not provide a reference themselves. Similarly, an employee must not be involved in decisions relating to discipline, grievance, promotion, pay adjustments or other similar employment related matters for any other employee who is a relative\* or with whom they are having a relationship.

\* Relative means:-

- A spouse or partner
- A son, daughter, step-child, child of partner or grandchild
- A parent, parent in law, partner's parent or grandparent
- A brother or sister or step brother or step sister
- An uncle, aunt, nephew or niece
- The spouse or partner of any of the above

- (e) Be knowingly an accessory to, condone or fail to report a disciplinary offence, unless there are justifiable mitigating circumstances.

## **Proper Conduct of the Council's Business**

### *Working Arrangements*

6. An employee shall comply with the agreed arrangements relating to his/her hours of work, meal breaks, sickness absence and requests for leave etc.
7. Employees shall not absent themselves from duty, report late or cease work before the authorised finishing time without permission.
8. An employee included in the flexible working hours or flexible working scheme shall observe its related rules and conditions.
9. When an employee is absent from work because of sickness he/she must report the absence in accordance with contractual requirements and instructions issued by management. The employee must not abuse the sickness scheme. The advice and instructions of any medical adviser(s), where appropriate, shall be observed. The employee must not commit any act that is likely to be inconsistent with the reasons for absences or do anything which may delay his/her return to work.

### *Council Policies, Procedures, Rules, Regulations, etc*

10. An employee shall observe agreed working procedures, operational regulations, safety rules, regulations and safe working procedures, management policies, procedures and codes of practice, standing orders, Council rules and financial regulations and shall carry out reasonable and proper instructions given in matters relating to duties.

Employees should strive to ensure value for money to the local community and to avoid legal challenge to the Council.

11. An employee shall not:

- (a) Disobey or omit to carry out a reasonable instruction or be insubordinate;
- (b) Breach the requirements of the Council's Smoking Policy Statement;
- (c) Fail to comply with a health and safety requirement;
- (d) Fail to discharge through carelessness, or neglect an obligation placed upon him/her by contract or statute;
- (e) Use public funds entrusted to, or handled by, them in an irresponsible and unlawful manner;
- (f) Fail to report any matter that he/she is required to report;
- (g) Fail to allow the search or seizure of offices, desks, mobile telephones, lockers, electronic documents, work diaries etc provided by the Council or produced on Council equipment;
- (h) Fail to wear in full, or as modified by instruction or authorisation, such uniform, special clothing or identification as may be issued by the Council;
- (i) Fail to properly wear any safety clothing or footwear, or properly use any safety equipment which has been issued as being necessary in the interests of health and safety or otherwise fail to have due regard to health and safety requirements;
- (j) Fail to act at any time in accordance with the trust that the public is entitled to place in them;
- (k) Commit any act that could result in an action against the Council which arises from negligence or breach of the duty of care;
- (l) Knowingly breach a copyright owned by a third party;
- (m) Knowingly breach the Council's Information Management & Information & Communication Technology Guidelines & Compliance Statement.

**NOTE**

All employees have the duty to report any suspicions that they may have of irregularities, financial or otherwise, to the appropriate manager, internal audit or Director of Finance & Resources.

*Records/Documentation*

12. On any matter for which an employee is accountable, all reasonable steps shall be taken to ensure that required information is complete, accurate, and available at the proper time. This requirement applies to all records and documentation (manual or computerised) including time sheets, flexible working hours sheets, time recording sheets, car allowance claims, expense claim forms, drivers' records, returns of ticket sales, payments, etc.
13. An employee shall not:
  - (a) Knowingly or through neglect make any false, misleading, or inaccurate oral or written statement or entry in any record or document;
  - (b) Alter or erase any entry with intent to deceive or misrepresent the true position. This includes unauthorised access and viewing of computerised records.
  - (c) Destroy or mutilate any document, data or record for malicious purposes or without sufficient cause;
  - (d) Failure to make appropriate arrangements for the security of records, data and documents;
  - (e) Failure to make records, data or documents available in a timely manner for management and audit purposes;
  - (f) Fail properly to account for, or make a prompt, accurate and complete return of, any money or property which is received in the course of the employee's duties, incur cash shortages or fail to pay in cash at the correct time, or in any way fail to comply with the Council's financial regulations;
  - (g) Make an obscene, or any other unauthorised comment on any sheet, document, or any other manual or electronic record;
  - (h) Make a defamatory remark or statement in reports, correspondence, internal correspondence, or electronic communications within the Council or with external persons or organisations.

*Care of Tools, Materials, etc*

14. Employees are required to take due care of all stores, materials, tools, plant, equipment and vehicles and any other property of, or under the control of, the Council. The employee must report to the manager/supervisor any loss, defect or damage to any such property which has been issued to or used by him/her, or where care has been entrusted.

15. An employee shall not:

- (a) Remove property from offices, stores, depots or other locations without prior authorisation. This includes any items or materials collected or deposited for disposal by the Council;
- (b) Use or allow others to use any such items without prior authorisation;
- (c) Use any such items for unauthorised purposes;
- (d) Wilfully, or by neglect, cause any waste, loss or damage;
- (e) Wilfully dispose of a Council asset without prior authorisation or without realising an appropriate value for the asset
- (f) Misuse the Council's telephone, radio or electronic systems, including the use of mobile telephones, hand held computer devices, postal system, facsimile system, e-mail systems or personal computers;
- (g) Use a computer diskette, tape, CD ROM, DVD, USB storage device, data memory card from any mobile device (MP3 player, camera, hand held computer devices or mobile phone) or downloaded file from any source on to a Council personal computer without first having it virus checked by the Information Services Business Unit;
- (h) Use the Council's photocopiers, facsimile system, electronic mail system, fixed or mobile computers, fixed or mobile telephones or other equipment and materials for private purposes, without the permission of the manager;
- (i) Use any of the Council's facilities or equipment, which may include premises, materials, transport, stationery and secretarial services, other than for Council business or other approved purposes, unless properly authorised to do so;

*Alcohol, Drugs and other Substances*

- 16. An employee shall not through the use of intoxicating substances, for example, alcoholic drink or drugs, either report for duty unfit, or become unfit during working hours for the duties that he/she is required, or likely, to perform.
- 17. Employees must ensure that any alcohol which they consume out of working hours (including lunchtime) will neither impair their work nor cause them to conduct themselves so as to damage the good reputation of the Council.

**NOTES**

- i) Employees who, due to a medical condition, are prescribed drugs that may affect their performance at work should bring this to the notice of their manager.

- ii) The Council has developed a Policy on the Misuse of Alcohol, Drugs or other Substances, which is designed to assist employees who experience problems through the use or misuse of alcohol, drugs or other substances.

### *Political Neutrality*

- 18. Employees are responsible to the Council through its senior managers. For some, their role is to give advice to Councillors and senior managers and all are there to carry out the Council's work. Mutual respect between employees and Councillors is essential to good local government. Councillors should be treated professionally and, close personal familiarity between employees and individual Councillors that can damage the relationship and prove embarrassing to other employees and Councillors should therefore be avoided.
- 19. Employees should always remember their responsibilities to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within that community as defined by the policies of the authority.
- 20. Employees serve the Council as a whole. It follows they must serve all Councillors and not just those of the controlling group(s), and must ensure that the individual rights of all Councillors are respected.
- 21. Subject to the Council's conventions, employees may also be required to advise political groups. They must do so impartially and in ways which do not compromise their political neutrality.
- 22. Employees, whether or not politically restricted, must have proper regard to every lawful expressed policy of the Council and must not allow their own personal or political opinions to interfere with their work.

### **Confidentiality and Disclosure of Information**

- 23. The Council practices open government. Where information is necessarily confidential, it should only be made available on a "need to know" basis. An employee must not discuss or divulge confidential information to any unauthorised persons. Many employees have regular access to confidential information, (for example on Council tenants, clients, businesses, contractors, other employees, Councillors and members of the public). All Council information should be treated as confidential unless the employee is sure that it is for public consumption. Employees must be aware of which information within the Council is open and which is not, and act accordingly. Employees should follow the Council's rules on the ownership of intellectual property or copyright created during their employment. For guidance contact your line manager.

Under the Data Protection Act an employee must not give personal information to any one who does not have a right to receive it.

24. An employee must not communicate information or documents, which are the property or copyright of the Council, to a third party without proper authority.
25. An employee must not use, or attempt to use, his/her official position for an improper purpose or any information obtained in the course of his/her employment for personal gain or benefit, nor pass it on to others who might use it in such a way.
26. An employee must not use in a private capacity (for example in a public meeting) any information gained through employment with the Council that is not available to the public at large.
27. An employee must not make statements to the press or any other person/media, regarding the business of the Council and purporting to be acting on behalf of the Council without prior authority.
28. Any particular information received by an employee from a Councillor which is personal to that Councillor and does not belong to the Council should not be divulged by an employee without the prior approval of that Councillor, except where such disclosure is required or sanctioned by the law.

## **NOTES**

- i) In certain circumstances the disclosure of information could be regarded as Gross Misconduct (see Section 6 Paragraph 18 n, o and p).
- ii) The Council's Information Management & Information & Communication Technology Guidelines are available on the Council's Intranet or copies are obtainable from your manager. These cover the processes that must be followed to comply with the Freedom of Information Act.

## **Tendering**

29. Employees involved in a tendering process and dealing with contractors should be clear on the separation of client and contractor roles within the Council. Senior employees who have both a client and contractor responsibility must be aware of the need for accountability and openness. Employees involved in tendering are required to comply with the Council's Contract Standing Orders, Financial Regulation 15 and Part V of Standing Orders with respect to meetings.
30. Employees must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.
31. Employees who are privy to confidential information on tenders or costs for either internal or external contractors should not disclose that information to any unauthorised party or organisation.
32. Employees contemplating a management buyout should, as soon as they have formed a definite intent, inform the appropriate manager, register their intent in the Council's Register of Gifts, Hospitality and Interests and withdraw from the contract awarding processes.



33. Employees should ensure that no special favour is shown to current or recent former employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them.

### **Outside Interests**

34. Whilst the Council does not wish to unreasonably prevent its employees from taking other paid employment or pursuing personal business interests, it is important that this should not interfere with their work for the Council in any way. If an employee has paid employment or business interests in addition to his/her job with the Council or is considering one/them, he/she should discuss it with his/her manager. Employees will need the specific approval of their senior manager, Chief Officer or Director and, for senior employees, it may not be allowed at all. All employees should be clear about their contractual obligations and should not take outside employment that conflicts with the Council's interests.
35. An employee must declare membership of a secret society\*\* in the Council's Register of Gifts, Hospitality and Interests.

\*\* A secret society is defined as "Any lodge, chapter, society, trust or regular gathering or meeting, which:

- (a) Is not open to members of the public who are not members of that lodge, chapter, society or trust
- (b) Includes in the grant of membership an obligation on the part of the member a requirement to make a commitment (whether by oath or otherwise) of allegiance to the lodge, chapter, society, gathering or meeting; and
- (c) Includes, whether initially or subsequently, a commitment (whether by oath or otherwise) of secrecy about the rules, membership or conduct of the lodge, chapter, society, trust, gathering or meeting.

A lodge, chapter, society, trust, gathering or meeting as defined above, should not be regarded as a secret society if it forms part of the activity of a generally recognised religion.

36. Employees, or their partners or relatives (See Section 5 paragraph 5 (d)), who have any formal or informal relationship with a contractor(s), and/or have previously had, or currently have, a private or domestic relationship with a contractor(s), must tell their manager and complete the Council's Register of Gifts, Hospitality and Interests.
37. All relationships of a business or private nature with external contractors, or potential contractors, must be made known to the appropriate manager and declared in the Council's Register of Gifts, Hospitality and Interests. Orders and contracts must be awarded on merit, by fair competition against other tenders, and no special favour should be shown to businesses run by, for

example friends, partners or relatives, in the tendering process. No part of the community should be discriminated against. Employees, who engage or supervise contractors or have any other official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity with contractors, should declare that relationship to the appropriate manager and complete the Register of Gifts, Hospitality and Interests.

38. Where there is any potential conflict of interest, financial or non-financial, with any part of the Council's services, or that they consider could bring about conflict with the Council's interests, an employee must ensure that the outside interests are brought to the attention of their manager, and recorded in the Council's Register of Gifts, Hospitality and Interests. An employee must take appropriate steps to ensure that actual or perceived bias is removed in relation to the delivery of the Council's Services (e.g. Determination of applications).
39. If the Council has entered, or is proposing to enter, into a contract in which the employee has knowledge of a direct or indirect pecuniary or personal interest, the employee must inform his/her manager and enter this in the Council's Register of Gifts, Hospitality and Interests.
40. The Council welcomes the involvement of employees in voluntary organisations. However, in order to ensure that public confidence is maintained an employee should inform their manager in writing if the services which the employee gives to any such organisations could conflict with the work which the employee carries out for the Council or if the organisation receives a grant from or has a contract (or service level agreement) with the Council.
41. Employees must not use their position as employees of the Council to favour any voluntary or other bodies to which they give service. If an employee's job involves assessing a funding application for a voluntary body to which they give service they should inform their manager in writing and seek the guidance of the manager.

## **Sponsorship**

42. Where an outside organisation wishes to sponsor or is seeking to sponsor a local government activity, whether by invitation, tender, negotiation or voluntarily, the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.
43. Where the Council wishes to sponsor any event or service no employee or his/her partner, spouse, relative or close associates should benefit directly without there being a full disclosure to the appropriate manager of any such interest. Similarly, where the Council through sponsorship, grant aid, financial or other means, gives support in the community, employees should ensure that impartial advice is given and that there is no conflict of interest involved.

## Off-duty Hours

44. Off-duty hours are the personal concern of employees (See General Conduct Section 5 paragraphs 2, 3 and 4 and Outside Interests paragraphs 34 - 41) but they shall not:
- (a) Subordinate their duties to private interests;
  - (b) Allow duties and private interests to conflict;
  - (c) Engage in employment in off-duty hours or conduct themselves in any way which, in the view of the Council, could conflict with or react detrimentally to the Council's interest, in any way weaken public confidence in the conduct of the Council's business or contravene statutory provisions relating to their jobs;
  - (d) Wear issued uniform during off-duty hours except when travelling to and from work, or when specifically authorised.
  - (e) Use any Council vehicle, equipment, facilities or supplies without the express permission of their manager.

## NOTE

Where an employee is subject to Police caution or charged with a criminal offence that took place during off-duty hours, he/she must report the fact to his/her Chief Officer or Director. The need for disciplinary proceedings will be considered in the light of its relevance to his/her employment. (See paragraph 17 and 18 Section 7).

## Gifts and Hospitality

45. The Council provides a wide range of services. To do this it has to place large orders with suppliers for materials and equipment, and contractors. In spending public money it is essential that the Council be seen to be scrupulously correct and fair in its dealings. If an employee is involved in contract tendering in any way he/she must speak to his/her manager about the rules and procedures related to these activities.
46. The general rule is that gifts and hospitality will **rarely** be accepted and should **never** be invited
47. Any offers or gifts should be made to the Council for the purposes of its functions or for the benefit of the service or the Borough - not to an individual as an employee. Suppliers or organisations of a similar nature must be treated in the same way in relation to gifts or hospitality accepted.
48. Invitations or hospitality given formally through the Council as an organisation are more acceptable than invitations given personally. Offers of hospitality should only be accepted if there is a genuine need to impart information or represent the Council or the community.

49. When hospitality has to be declined, those making the offer should be courteously but firmly informed of the procedures and standards operating within the Council. It may still be appropriate in these circumstances to record the rejection in the Register of Gifts, Hospitality and Interests.

50. Employees cannot

- Accept any monies offered directly to you as a result of your position at the Council
- Accept any personal gift of more than £25.00 in value
- Accept an offer to attend a purely social or sporting function unless it is considered appropriate for the Council to be seen to be represented (check with your Manager)
- Accept a bequest if it relates directly to actions undertaken by you in the normal course of your Council duties
- Accept a gift or hospitality where its timing could be construed as sensitive to any decision being taken by the Council
- Accept a gift or hospitality where it may be perceived that this would influence a purchasing decision or provision of a service

51. Employees can

- Accept insignificant gifts e.g. pens, diaries. (Items useable at work are generally more acceptable than those for personal use)
- Accept a **one-off** reward of money for service which the customer writing in feels is "above the call of duty", the reward is unsolicited, below £20 and the acceptance has been approved by your Manager and registered in the Register of Gifts, Hospitality and Interests
- Accept hospitality received during attendance at conferences, meetings or seminars where it is clear that it is "corporate" rather than personal and attendance has been authorised by your Manager

52. On the rare occasions that it is considered acceptable to accept gifts or hospitality a record must be made in the Register of Gifts, Hospitality and Interests as soon as possible and at least **within 28 days**

Employees **must** register

- All gifts of money, cash, cheques or credit
- Any tangible item of value over £5.00
- Any incidence of hospitality accepted other than a normal meeting or seminar

The entry in the Register of Gifts, Hospitality and Interests should detail on what grounds the gift or hospitality has been accepted and what has happened to any gifts received (e.g. donated to the Mayor's charity)

53. Where an outside organisation wishes to sponsor a Council activity, the same conventions apply concerning acceptance of gifts or hospitality.

54. Apart from participating in concessionary schemes arranged by Trade Unions or other groups for their members, employees should not use contractors employed by the Council to get materials or work done at cost, trade or discount prices.
55. Employees are expected to take all proper steps to avoid any suggestions that they may be involved in any corrupt or dishonest practices, through bribery or otherwise, in accepting gifts or rewards. Should you have any doubt as to the right course of action in any particular circumstances you should **always** seek the advice of your manager. Ultimately, improper behaviour may not just be a disciplinary matter; it could be a criminal offence.

## SECTION 6 - INTRODUCTION TO DISCIPLINARY RULES AND PROCEDURE

### Introduction

1. Management is responsible for maintaining and setting standards of performance and for ensuring that disciplinary rules and procedures are in place and that these are understood by employees. Managers in conjunction with Personnel Services are responsible for ensuring that all notifications are made in accordance with this Procedure and that appropriate records/notes are kept of all proceedings.
2. As a formal approach, the main purpose of the Council's Code of Conduct, Disciplinary Rules and Procedure is to encourage an improvement in an employee whose standard of conduct is unsatisfactory. The Council's policy is to ensure that effective arrangements exist for dealing with disciplinary matters and that, as far as possible, common standards are observed for all employees. It must be seen as an attempt to secure improvement in conduct, to treat staff in a fair and consistent manner and to provide a procedure so all parties know what to expect.
3. It is in everyone's interest to ensure that any disciplinary matter is dealt with quickly, effectively and above all fairly. Minor faults will, in the main, be dealt with through normal management practice and may possibly involve counselling, coaching and supervision. Where this has failed to correct a situation, more formal measures may be necessary.
4. The Disciplinary Procedure does not cover the initial stages of dealing with impaired performance through factors such as ill health or lack of ability to cope with changing demands; this is dealt with initially by a separate Capability Procedure. The latter stages of the Capability Procedure do however follow the same format as the Disciplinary Procedure.
5. The Procedure draws a clear distinction between informal and formal processes, provides for consistency of approach, is designed to be transparent, easy to understand in application and to reflect good employment practice.

### PRINCIPLES

6. In accordance with the ACAS Code of Practice on 'Disciplinary and Grievance Procedures'; the Council's general disciplinary principles are outlined below. They will be expanded upon further in this document.
  - (a) Minor shortcomings in an employee's overall conduct shall, where day to day supervision is appropriate, be drawn to the attention of the employee and possible remedies should be considered before formal steps become necessary.
  - (b) The Procedure is designed to establish the facts quickly and fairly and no management decisions/disciplinary action will be made until there has been a proper investigation of the facts/Disciplinary Hearing held.

- (c) At every stage of the Procedure the employee will be treated fairly, and full account taken of any special needs (e.g. disability, English not first language etc) be advised of the nature of the allegation and given the opportunity to state his/her case fully.
- (d) No employee will be dismissed for a first breach of discipline except in the case of Gross Misconduct when they are potentially liable for summary dismissal without notice or payment in lieu of notice. Dismissal will only be decided upon by those authorised to act. (See "Authority to Act" Appendix 2)
- (e) All managers involved in the Disciplinary Procedure will keep management notes of the investigations and Hearings including the rationale behind the decision making process. These will be made available to the employee.
- (f) At all stages of the Procedure the employee will have the right to be accompanied by a trade union representative or work colleague of their choice but by no one else including external legal representation.
- (g) When an employee is required to attend a Disciplinary Hearing there will be advance written notice to them setting out the grounds for the Hearing and its possible consequences. Witnesses may be called by either party. Documentary and other evidence (including which witnesses are to be called) will, as far as practically possible, be produced with that written notice. The employee will be expected to also make the necessary witness and documentary disclosures available prior to the Hearing.
- (h) Criminal activities (either inside work or outside if it is likely to affect an employees work and/or the Council) will be investigated under the Disciplinary Procedure. Awaiting the outcome of any criminal investigation may not delay the Council's Hearing.
- (i) The formal procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.
- (j) Only designated employees/Councillors will implement the Disciplinary Procedure and take disciplinary action in accordance with the level authorised. (See "Authority to Act" Appendix 2). Such employees/Councillors will have a copy of the Disciplinary Procedure and will have received guidance on how to apply it.
- (k) An employee will be given an explanation for any penalty imposed, informed of the improvement expected and have the right to appeal against it to the next level of management. (See "Authority to Act" Appendix 2). Such appeals will normally involve a complete review of the circumstances of the case and the penalty decided upon. Any sanction imposed will have an expiry date.
- (l) Every effort will be made to proceed expeditiously. The timescales are constructed to allow sufficient time for the preparation of case. A formal

request for a deferment of a Hearing where further time is needed to prepare will not be unreasonably refused provided enough notice is given and the reasons explained. The deferment will not exceed 5 working days and will not normally exceed one instance.

- (m) Where an employee raises a grievance related to the disciplinary case, proceedings may have to be suspended for a short while until the grievance is considered. Where a grievance is raised Personnel Services must be consulted.
- (n) If an employee refuses to attend a meeting called under this Procedure management will write to the employee concerned explaining that a disciplinary decision may have to be taken in their absence, based on information to hand. If a reasonable reason for non-attendance is forthcoming the process at (l) above will apply.
- (o) All disciplinary matters will be treated confidentially.
- (p) Personnel Services will be available to managers for advice and support at every stage of the Procedure and will monitor and advise on its consistent application throughout the Council. A representative of Personnel Services will be present at all formal interviews held with employees under this Procedure.
- (q) The Procedure has been drawn up in discussion with the trade unions recognised by the Council.

## **AUTHORITY TO ACT**

- 7. Only those so authorised may act in the implementation of this Procedure. A schedule of "Authority to Act" is attached at Appendix 2.
- 8. Notwithstanding "Authority to Act" (Appendix 2), the Director of Finance & Resources may independently initiate disciplinary action against any employee with regard to suspected fraud or financial irregularity
- 9. A designated employee with "Authority to Act" (Appendix 2) shall present the management case at an appeal against the decision they have taken.

**NOTE** The designated employee may nominate a representative where they are unavailable to act.

## **GENERAL RESPONSIBILITIES**

- 10. Chief Officers/Directors and Managers are responsible for ensuring that the Council's Code of Conduct, Disciplinary Rules and Procedure are understood by all employees including those whose first language is not English or have a disability or other impairment. They shall also ensure that the Code, Rules and Procedure are correctly implemented within their service areas.



11. It is the responsibility of managers in consultation with Personnel Services to ensure that all notifications are made in accordance with this Procedure and that appropriate records/notes are kept of all proceedings.
12. Where appropriate, arrangements for training in the use and operation of the Procedure will be initiated by Personnel Services.
13. Personnel Services will make the necessary arrangements for Disciplinary and Appeal Hearings, which involve Councillors. They will also provide any advice necessary to Councillors.
14. It is the responsibility of Personnel Services to provide overall guidance and advice, as required, in the implementation of the procedure and to monitor consistency of application throughout the Council.

## **DISCIPLINARY RULES**

15. The aim of these rules is to make clear the standards necessary for ensuring a safe and efficient workplace and for maintaining good employment relations.

### **Gross Misconduct**

16. Acts which constitute Gross Misconduct are those resulting in a serious breach of contractual terms and can, therefore, after proper investigation of the alleged offence, justify summary dismissal. (Dismissal without notice or previous warning).
17. Whilst it is possible to give examples of what might constitute gross misconduct, each case has to be considered in the light of its own circumstances, since the seriousness of an action often depends on considering a number of criteria. These include:
  - a) The nature of the alleged offence;
  - b) The duties and position in the Council of the employee (how senior they are, and what responsibilities they have);
  - c) Wilfulness/intent (whether there has been deliberate intention to breach Council policy and/or standards);
  - d) Mitigating circumstances.
18. The following acts, and offences of a like nature or similar gravity, are normally regarded as gross misconduct; but as indicated earlier this list is not intended to be exhaustive.
  - (a) Serious insubordination to a member of management including continual refusal to carry out reasonable instructions;
  - (b) Theft, or attempted theft, misappropriation of property, fraud/dishonesty or deliberate falsification of, or destruction of, records from the Council,

or its employees, Councillors or associated organisations, or from premises being visited during the course of employment;

- (c) Unauthorised possession or use of the Council's property, or the property of its employees, Councillors, the public and contractors. Criminal and/or malicious damage to or any other unlawful act which involves the property of the Council, its employees, Councillors, the public, suppliers or contractors or associated organisations;
- (d) Offences of a dishonest or fraudulent character, including failure to disclose material information, convictions, or knowingly making a false statement or omission when applying for an appointment, or falsification of records, time sheets, flexi sheets, time recording sheets, expense claim forms, car allowance claims, returns of ticket sales, drivers' records, etc.;
- (e) Deliberate disregard and/or intentional breach of the Council's Policies, Procedures, Rules and Regulations, statutory provisions and general instructions concerning the collection, transfer, security and paying in of monies, the issue and receipt of tickets or receipts and the completion and submission of associated documents and the deliberate or wilful failure to maximise income to the Council in the disposal of any of its assets;
- (f) Deliberate action or omission which endangers or might endanger life or limb including deliberate damage to, or neglect of, or misappropriation of, safety equipment and any violations of health and safety rules, instructions and codes of practice which could give rise to serious consequences; i.e. breach of the Council's duty of care;
- (g) Disorderly or indecent conduct, physical violence or bullying, actual or threatened;
- (h) Unlawful discrimination or harassment including discrimination as defined within the Council's Codes of Practice for Dignity at Work and Equality of Opportunity in Employment;
- (i) Possession of illegal drugs or substances whilst on duty or the consumption of alcohol or the taking of drugs or other substances in direct contravention of a specific management instruction or regulation, or being under the influence of alcohol or illegal drugs or intoxicating substances in circumstances where it could constitute serious incapability at work, a health and safety hazard or where it would be in breach of a position of responsibility and trust;
- (j) Serious breach of the Council's Information Management & Information & Communication Technology Guidelines & Compliance Statement;
- (k) Deliberate or wilful sabotage of one of the Council's computerised systems;

- (l) Without prior management agreement engage in other paid employment whilst receiving sick pay or other benefits from the Council during a period of sickness or unauthorised absence;
- (m) The use, or attempted use, of an employee's official position for an improper purpose, for his/her own private advantage or for the advantage of a third party, including without authorisation, accepting any fees, gifts, hospitality, favours or other reward (see Section 5 paragraphs 45 - 55) or favouring family and friends in the delivery of a service;
- (n) Omission, misrepresentation or conduct likely to damage seriously the image and/or reputation of the Council and/or which leads to a loss of confidence in the public service;
- (o) Serious misuse of the Council's property or name;
- (p) Wilful damage to Council property, those other agencies or other employees;
- (q) Serious neglect of duty and responsibility or carelessness, which causes or might cause unacceptable loss, damage or injury;
- (r) Criminal offences and other conduct outside employment, whether on or off duty which affects the employee's suitability to perform his/her work, makes him/her liable to be unacceptable to other employees or management, or is liable to damage the Council's business and/or reputation and are such that the employee's presence at work cannot be allowed;
- (s) Failure to comply with the requirements of the Local Government Act 1972, which requires an employee or office holder to declare an interest where it comes to their knowledge that a contract in which he/she has any, either direct or indirect, pecuniary interest has been or is proposed to be entered into by the Council. Employees to whom this may apply must seek advice;
- (t) Canvassing Councillors for appointment, promotion or other personal advantage.
- (u) Failure to disclose when asked any keys, equipment, documents, passwords, de-encryption codes or any other item or information needed to assist with any investigatory process.
- (v) Failure to allow investigatory processes relating to the searching or seizure of offices, desks, mobile telephones, lockers, electronic documents, work diaries etc provided by the Council or produced on Council equipment.

## Misconduct

19. Any employee may, after careful investigation of the alleged offence, have disciplinary action taken against them. Examples of misconduct that may result in the Procedure being invoked are:
- (a) Breach of the Council's Code of Conduct;
  - (b) Insubordination, refusal or deliberate failure to follow a reasonable management instruction;
  - (c) Irregular timekeeping or continual lateness;
  - (d) Unauthorised absence from work or the work place;
  - (e) Truculent/foolish behaviour or abusive language likely to cause offence to other employees or members of the public;
  - (f) Contravention of safety/hygiene rules and instructions;
  - (g) Breach of the Council's Smoking Policy Statement;
  - (h) Sleeping on duty, without management approval;
  - (i) Being under the influence of alcohol or other substances;
  - (j) Repeated and significant misuse of Council paid working time or facilities (e.g. computer facilities, telephones, parking in unauthorised areas, fax machines);
  - (k) Minor neglect of responsibilities or breach of the Council's policies and procedures;
  - (l) Wilful failure to adapt to changing technologies, methods and patterns of work (as distinct from inability to adapt which is dealt with under capability procedures); Repeated failure may lead to dismissal.
  - (m) Minor contravention of the Council's Information Management & Information & Communication Technology Guidelines & Compliance Statement.
  - (n) Any wilful act that impedes an investigation into an alleged act of misconduct.
  - (o) Any other act or omission that might otherwise (if the context were judged to be more serious) be dealt with as a matter of gross misconduct.

## **SECTION 7 - DISCIPLINARY PROCEDURE**

### **INTRODUCTION**

1. This Procedure should not be seen primarily as a means of imposing sanctions but rather as a way of encouraging improved conduct amongst employees.

### **DAY-TO-DAY SUPERVISION OF EMPLOYEES**

2. Minor issues of conduct or omission will, in the main, be dealt with informally by the Supervisor/Manager.
  - (a) The day-to-day supervision of employees and monitoring of their conduct is part of the normal management process within the Council.
  - (b) When a minor incident occurs and it is suspected that an employee may have committed an act of misconduct, the employee shall normally be interviewed by the supervisor or manager (See "Authority to Act" Appendix 2), told of the incident and given the right to reply.
  - (c) It is expected in the majority of cases, the matter will be resolved at this stage without reference to the formal procedure by clear instruction and the employee informed of the conduct or standard expected within a specified timescale. It may be appropriate to consider offering either/or a combination of training, coaching or counselling.
  - (d) If the required improvement is insufficient or a further instance of misconduct occurs; the formal stage of the Disciplinary Procedure will apply.
  - (e) A brief note of the discussion(s) will be kept for reference purposes. This can be a diary record. Where it is considered appropriate for the employee to receive written confirmation of the outcome a copy of this Supervision Note must be appended to the employee's personal file.
  - (f) Where the employee's conduct or omission is considered to constitute a more serious breach of discipline, or where the employee has failed to respond to previous instructions, the matter shall be the subject of further consideration and investigation.
  - (g) Where there is a suspected irregularity affecting the resources of the Council, the supervisor or manager should comply with the Council's Irregularity Response Plan on the subject (available on the Council's Intranet).
  - (h) Where the supervisor or manager has reasonable grounds for believing that the incident is one of gross misconduct or believes there are grounds to doubt the suitability of the employee continuing at work, the employee must be suspended pending investigation, in accordance with this Procedure. Suspension pending investigation does not constitute disciplinary action.

## **PRELIMINARY INVESTIGATION AND CONSIDERATION**

3. Any alleged breach of discipline which has not been, or is not appropriate to be, resolved by the day to day supervision of employees as described in paragraph 2 above shall, before any disciplinary action is taken, be fully investigated by, or under the direction of, a person designated for this purpose (See "Authority to Act" Appendix 2) and a representative from Personnel Services.
4. An investigatory meeting(s) shall be held to establish the facts promptly with the employee, at which the employee has the right to be accompanied by a trade union representative or some other work person of his/her choice, but by no one else. The letter requesting the employee to attend a meeting will set out the nature of the allegation(s). At least 3 working days notice of the meeting will be given. The employee should be kept informed of progress and of the likely timescale.
5. The investigation process will be carried out speedily but without comprising fairness or thoroughness or sensitivity to issues of dignity at work or equality of employment. It should be undertaken as discreetly and privately as possible to avoid unjustified damage to reputations. As a guideline, every endeavour will be made in cases of misconduct to complete the investigation and recommendations within one calendar month and for cases of serious or gross misconduct within two calendar months subject to the availability of resources. Personnel Services must be involved throughout the process.
6. There should be as much investigation as is reasonable in the circumstances. It should be sufficient to:
  - Establish a genuine belief that the alleged misconduct, act or omission has taken place; and
  - Provide reasonable grounds to sustain that belief on the balance of probabilities; or
  - Establish whether there is a case to answer
7. Normally, as part of the fact finding, it will be appropriate for the person undertaking the investigation to interview the employee giving him or her the opportunity to offer an explanation and the facts from his or her point of view.
8. Care must be taken to ensure that investigatory meeting(s) do not turn into a Disciplinary Hearing. Where it becomes evident that a Disciplinary Hearing is appropriate then it must be convened in accordance with this Procedure.
9. The person undertaking the investigation may interview other employees and, if appropriate the public if they made an allegation or were eyewitnesses to an event or incident. They will be asked for the facts and circumstances of the alleged incident and signed, dated written statements taken. Witnesses may be asked to attend a Disciplinary Hearing.

10. If, after careful consideration of all the information available it is concluded that the alleged breach of discipline should be the subject of a Disciplinary Hearing the employee must be notified accordingly, and arrangements made for the disciplinary hearing to take place as soon as is practicable. The notes of the investigatory meeting(s) will be shared with the employee, the employee asked to agree and sign as a correct record. If there is no case to answer, all documentation will be destroyed.

## **SUSPENSION PENDING INVESTIGATION**

11. Suspension should normally occur only when, after proper consideration, there is a genuine belief that the continuing presence at work of the employee may impede the investigation, or that they and/or the reputation of the Council may be put at risk. Suspension from work, with pay, is not a disciplinary penalty but is intended to allow for a proper investigation. Suspension can occur before or during the course of an investigation. The period of suspension should be as brief as practicable and kept under review to ensure it is not unnecessarily protracted.
12. If a designated manager (See "Authority to Act" Appendix 2) in consultation with Personnel Services:
  - (a) Has reasonable grounds for believing that an alleged breach of discipline constitutes an act of gross misconduct where relationships have broken down; or
  - (b) Believes that the continued presence at work of the employee could be prejudicial to the investigation or that evidence may be tampered with or destroyed prior to an investigatory meeting with notice or that there are risks to Council's reputation, property, records, or to other employees or the public at large; or
  - (c) Believes there are grounds, at any stage of the investigation to doubt the suitability of the employee continuing at work; or
  - (d) Where the nature of the alleged misconduct is such that its future occurrence or re-occurrence could have serious consequences for other employees of the Council or the public at large, e.g. dangerous practices, drunkenness, irregularities in cash handling, or
  - (e) Contact by the individual with other employees may constrain them from co-operating fully with enquiries, or
  - (f) Where there is a real concern that the employee's continued presence at their place of work could result in serious disruption whether deliberate or otherwise, e.g. where the pressure of the proceedings prevents the employee from working effectively or where the employee is in a position to commit deliberate acts of sabotage.

He/she must suspend the employee on full pay. In this context, full pay shall be calculated in accordance with national conditions of service as modified by local agreement.

13. His/her decision shall be confirmed in writing giving the reasons for the suspension and it made clear that this suspension is not considered a disciplinary action.
14. The period of suspension should be reviewed to ensure that it is not unnecessarily protracted.
15. The period of suspension may need to be extended beyond the period of the investigation until the Disciplinary Hearing has been held and a decision to do so must be communicated to the employee.
16. If the employee is found not to have been at fault, the suspension will be lifted and an appropriate statement made in writing to the employee and all documentation removed from the employee's personal file.

### **DEALING WITH POLICE INVESTIGATION, CRIMINAL ACTIVITY OR CONVICTION**

17. These shall not be treated as automatic reasons for dismissal. The main consideration shall be whether the police investigation or offence is one that makes the employee unsuitable for their type of work. Accordingly criminal offences, whether on or off duty, which are likely to affect an employee's suitability to do their job and/or their relationship with the Council, work colleagues or customers will be investigated.
18. The first stage shall be to determine after considering the facts whether the conduct is sufficiently serious to warrant a Disciplinary Hearing. This will be based on the outcome of the investigation. Awaiting the outcome of any criminal investigation may not delay a Disciplinary Hearing.

### **THE DISCIPLINARY HEARING**

19. All Disciplinary Hearings are held in private and are based on the finding of disciplinary investigations. All evidence presented by management must be pertinent to the case in question, and have been shared with the employee prior to the Hearing.
20. The parties shall be advised of the procedure to be adopted at the Hearing (See "Authority to Act" Appendix 2) and shall receive at least five working days notice of the date of the Hearing unless an earlier date is mutually agreed.
21. When an employee is required to attend a Disciplinary Hearing there will be prior written notice of:
  - the date, time and place of the Hearing;
  - the nature of the allegation(s) against him/her;
  - the nature of the disciplinary action that could be taken, including, if applicable, that they may lead to dismissal;



- the right to be accompanied by a trade union representative or work colleague of their choice but by no one else, and the right to call witnesses and/or present documentary evidence at the Hearing. Any documentary evidence must be copied to management prior to the Hearing (See paragraph 26);
- any witnesses to be called by management;
- provided with any documentary evidence;
- provided with a copy of the Disciplinary Procedure; and,
- the name of the employee/composition of the Panel taking the Hearing and that a representative of Personnel Services will be present.

Any reasonable adjustments, if required, will be made to cater for employees who have a disability or other impairment.

22. In a case of an alleged breach of discipline the Hearing will be conducted by a manager or senior manager or Chief Officer/Director or other appropriate employee designated for this purpose (See "Authority to Act" Appendix 2) in conjunction with a representative from Personnel Services. The person presenting the case against the employee will normally be the Investigating Officer and may also be accompanied by a representative from Personnel Services.
23. In a case of alleged gross misconduct or where an employee has persisted in acts of indiscipline or misconduct after a final written warning, the Hearing shall be conducted by a senior manager, Chief Officer, Director or other person designated for this purpose (See "Authority to Act" Appendix 2) and the Head of Personnel and Development or their designated representative.
24. The employee must take all reasonable steps to attend the Hearing. A formal request for a deferment of a Hearing will not be unreasonably refused provided adequate notice is given and the reasons explained. The deferment will not normally exceed seven working days after the date originally proposed unless this is extended by mutual agreement. The revised date will be confirmed in writing to all parties.
25. In the event of the authorised absence or failure to attend of the employee on the date of the Disciplinary Hearing as originally scheduled, the Hearing shall be postponed and re-arranged within a reasonable timescale normally within seven working days, and where possible on a date agreed by all parties and all parties informed in writing. The letter sent should also explain that a decision may be taken on whether to proceed on this later date if the employee fails to attend without good reason, with the employee's representative being provided with the opportunity to present the employee's case on his/her behalf and respond to the management case.
26. Both parties may call witnesses employed by the Council, and present documents in support of their case. Any witnesses to be called and/or documents to be presented by the employee must be submitted to Personnel

Services where possible 5 working days in advance of the Hearing to enable them to be circulated to all parties.

27. Witnesses not employed by the Council may also be called subject to their availability and willingness to attend the Disciplinary Hearing.

### The Hearing

28. A Hearing will be held in private and the procedure to be followed is set out at Appendix 3. This consists of four key steps as follows:

- (a) **Step One** - Management presents case and calls witnesses. Management and witnesses can be questioned by employee and/or his/her representative. The authorised person/Panel conducting the Hearing may ask questions.
- (b) **Step Two** - Employee or representative will present their case and may call witnesses. Management can question the employee/representative and witnesses. The authorised person/Panel conducting the Hearing may ask questions
- (c) **Step Three-** Both parties to be given opportunity to sum up. The Hearing is adjourned for deliberation. If further clarity is required, both parties and, if appropriate, witnesses may be recalled.
- (d) **Step Four** - The authorised person/Panel presents the decision, normally, orally to both parties. On occasion the decision may not be communicated on the day of the Hearing.

### NOTE:

- (i) The Personnel Services representative accompanying the authorised person/Panel will have the right to ask questions of both parties.
  - (ii) It may be necessary for adjournments to take place during Disciplinary Hearings. Either party may request an adjournment.
29. If, after full and careful consideration of all the evidence, it is decided that the alleged breach of discipline is substantiated and that disciplinary action shall be taken, such action shall be determined in accordance with the principles and considerations set out in this Procedure. Where it is decided that no formal action is justified the employee must be informed.
30. Notes must be taken and these should contain essential details of the discussion and the decision made including the rationale behind it. All notes of proceedings, witness statements and records shall be kept confidential.
31. The employee shall be advised of the decision and right of appeal in accordance with this Procedure, at the conclusion of the Hearing or as soon as practicable thereafter. In any event, the decision shall be conveyed in

writing within seven working days. This will be by the issue of a disciplinary notice for decisions relating to misconduct setting out.

- The nature of the misconduct.
- The disciplinary sanction.
- If appropriate, the change in conduct required
- The consequences of further misconduct within the period of the disciplinary sanction
- That a record of the warning will be kept and subject to satisfactory conduct will be disregarded for disciplinary purposes after a specified period as set out in this Procedure and
- Advised of the right of appeal.

The employee's representative will be given a copy of the Disciplinary Notice. The employee will be required to sign and return a copy of the Notice as evidence of receipt.

## **DISCIPLINARY ACTION**

32. In reaching a decision, following a Hearing, the need to satisfy the test of reasonableness in all the circumstances of the particular case will be paramount. The test will be on the balance of probabilities that the employee did or did not commit the alleged misconduct or gross misconduct. Accordingly the disciplinary action should be based on:
  - a) The evidence given at the Hearing
  - b) Be appropriate to the seriousness of the offence(s), or, in certain cases, the frequency with which offences are committed.
  - c) Full consideration given to the employee's circumstances, past conduct, health or any domestic, personal or social factors, which may be relevant.
  - d) Any representation made by the employee or his or her representative in mitigation
  - e) The primary aim is to effect an improvement in the conduct of the employee concerned.
  - f) A consistent, fair and effective approach be maintained (including taking account of any precedent)
  - g) And any other relevant factors

## **Forms of Disciplinary Action**

33. After a Disciplinary Hearing and based upon the decision reached the following forms of disciplinary action or a combination of them, may be taken:

- a) Written warning, which in some circumstances may be a Final Written Warning
- b) Withholding of increments
- c) Suspension without pay – as an alternative to dismissal
- d) Suspension of sick pay
- e) Disciplinary transfer
- f) Demotion
- g) Dismissal with notice
- h) Summary dismissal in cases of gross misconduct

**NOTE:** In this context, Disciplinary Transfer or Demotion is without pay protection and is considered as an alternative to dismissal. Transfer may be to a similar level job or a lower level job but would not exclude:

- the possibility of dismissal should further disciplinary action be necessary
- a Warning or Final Written Warning also being given

It may also be appropriate in exceptional and extenuating circumstances, to take other measures. The employee shall be given a written explanation for any measures(s) imposed.

- 34. In cases of dismissal the employee will be informed of the date the employment contract will terminate, the appropriate period of notice, or of the last day of employment in the case of summary dismissal and a right of appeal. There will be no liability to pay the employee for the period between the dismissal and the disposal of an Appeal. This period would be fully reimbursed in the event of a successful Appeal.
- 35. A copy of the Disciplinary Notice will be placed on the employee's personal file, normally for 12 months for a Written Warning and 18 months for a Final Warning. The warning will be disregarded after the stated period subject to satisfactory conduct.

### **Disciplinary Action against Trade Union Representative**

- 36. Although normal disciplinary standards apply to their conduct as employees, no disciplinary action should be considered against an employee who is a recognised Trade Union Representative until the circumstances of the case have been discussed, after obtaining the employee's agreement, with a Full Time Official of the Trade Union concerned.

37. This does not prejudice management's right to suspend the employee on full pay pending investigation if it is considered appropriate, in accordance with Section 7 (Suspension Pending Investigation) of this Procedure.

## **APPEALS**

### **Right of Appeal**

38. An employee has the right of appeal against any disciplinary action under this Procedure. This right together with the procedure to be followed to initiate the appeal shall be set out in the Disciplinary Notice.

### **Originating the Appeal**

39. An appeal must be lodged in writing within five working days of the receipt of the notice detailing the sanction, using the appeal form available for this purpose. The appeal form should state the specific reasons for the appeal and whether the appeal is against:
- a) The finding that the employee committed or was involved in the offence; and/or
  - b) The form of disciplinary action taken against him/her.
  - c) Perceived procedural irregularities
  - d) To present new evidence which has subsequently come to light. The new evidence should be submitted with the appeal form.

### **Appeal Against Disciplinary Transfer or Dismissal**

40. Appeals shall be heard by an appropriate Appeals Panel. The Appeal Hearing will normally be arranged to take place with the employee, and, where applicable, his/her representative, within 6 weeks of the receipt of the appeal and the employee shall be given notice at least five working days in advance of the date, time and place. The letter will also state their right to be accompanied, the names of the employees/Councillors who will hear the Appeal, the action that could be taken, that witnesses may be called by either party and where possible all relevant evidence should be exchanged prior to the Hearing.
41. An exchange of all documents of each party's case and a list of witnesses to attend the Hearing together with notes of the Disciplinary Hearing should take place at least five working days before the Hearing.

### **Appeals against other forms of Disciplinary Action**

42. Appeals shall be heard by a manager authorised to act. (See "Authority to Act" Appendix 2).

43. Within one month of the receipt of an appeal, the Chief Officer/Director, or other senior manager specifically designated for the purpose, shall arrange for, and hold, an Appeal Hearing, with the employee and where applicable his/her representative, and the employee shall be given notice at least five working days in advance of the date, time and place. The letter will also state their right to be accompanied, the names of the Officer/Councillors who will hear the Appeal, the action that could be taken, that witnesses may be called by either party and all relevant evidence should be exchanged prior to the Hearing.
44. An exchange of all documents of each party's case and a list of witnesses to attend the Hearing together with notes of the Disciplinary Hearing should take place five working days before the Hearing.

### **Deferment of Appeal Hearing**

45. The employee must take all reasonable steps to attend the Hearing. A formal request for a deferment of a Hearing will not be unreasonably refused provided adequate notice is given and the reasons explained. The deferment will not normally exceed seven working days.
46. In the event of the authorised/unauthorised absence of the employee on the date of an Appeal Hearing, the Hearing will be reconvened within a reasonable timescale and where possible on a date agreed by all parties and all parties informed in writing. The letter sent should also explain that a decision may be taken on whether to proceed on this later date if the employee fails to attend without good reason, with the employee's representative being provided with the opportunity to present the employee's case on his/her behalf and respond to the management case. Any written submission by the employee and/or his/her representative will be considered.

### **The Appeal Hearing**

47. The Hearing will be held in private and based on and confined to the reasons for the appeal. New evidence used and/or new witnesses may be called to an Appeal Hearing only if the evidence is relevant to the grounds of appeal.
  - (a) **Step One** – Management presents case and calls witnesses. All parties are open to questions by all others present.
  - (b) **Step Two** - The employee presents case and calls witnesses. All parties are open to questions by all others present.
  - (c) **Step Three** – Both parties are given the opportunity to sum up. The Hearing is adjourned for deliberation. If further clarity is required, both parties and, if appropriate, witnesses may be re-called.
  - (d) **Step Four** - The decision of the appeal is normally communicated to both parties in person at the conclusion of the Hearing, but may be deferred. In any event, written confirmation giving the reasons for the decision and making clear that this is the final stage of the appeal process, will normally be issued within 5 working days.

48. The parties shall be advised of the procedure which is detailed at Appendix 3. This procedure will be followed unless varied by mutual agreement.
49. The senior manager/panel hearing the appeal must be accompanied by the Head of Personnel and Development or his/her representative as an adviser who shall have the right to ask questions.
50. The manager or Panel hearing the appeal has the power to remove, decrease or confirm the penalty imposed at the Disciplinary Hearing.

Where an appeal decision confirms a dismissal, the date of the dismissal will be the date originally notified to the employee, providing that notification complies with employment legislation. There will be no liability to pay the employee for the period between the dismissal and the disposal of the Appeal.

There is no further right of Appeal.

Notes must be taken and these should contain essential details of the discussion and the decision made including the rationale behind it. All notes of proceedings, witness statements and records shall be kept confidential.

## **DISCIPLINARY RECORDS**

51. Any record of disciplinary action against an employee and Appeal Hearing decisions shall be carefully safeguarded and treated as confidential. They shall be retained in accordance with the Procedure and the Data Protection legislation, which requires the release of certain data to employees on their request. Information pertaining to witnesses may be withheld to protect them.
52. Records shall be kept detailing the investigations and the outcomes from Disciplinary and Appeal Hearings. If a grievance is raised during the Disciplinary Procedure details of this must be recorded and retained.

Except in special circumstances disciplinary sanctions below a Final Written Warning will be disregarded after 12 months and, for a Final Written Warning, will be disregarded after 18 months. In exceptional circumstances the Disciplinary Notice conveying the disciplinary sanction may direct that a warning is effective for a longer period but sanctions will not be "open ended".

53. At the expiry of the warning period, unless the Disciplinary Procedure has been re-invoked within the period of the Warning or there are special circumstances, all documentation relating to the disciplinary action will be removed from the employee's personal file. A minimal record will be retained, confidentially by Personnel Services for matters covered in paragraph 54 below.
54. Previous warnings that have lapsed will be disregarded in the future application of this Procedure. However, they may be relied upon in a future case of a similar nature, to rebut an employee's suggestion that they were not aware of the seriousness of their conduct, or to counter an employee's claim that may be inconsistent with his/her previous service and disciplinary record.

55. Employees can access their personal file and see information relating to this Procedure by writing to Personnel Services who will make it available within 5 working days of receipt of the request. Arrangements will be made for the employee to see the File information in the presence of a third party. Unless the employee has provided signed authority the trade union side representative can only see the File information in the presence of the employee.

## **AMENDMENT TO TIME LIMITS**

56. The parties involved in a particular disciplinary matter may, on occasion and by mutual agreement, modify the time limits referred to in this Procedure.

## **REVIEW**

57. The Code of Conduct, Disciplinary Rules and Procedure will be reviewed from time to time. Any amendments needed in the light of developments in employment legislation or employee relations practice to ensure their continuing relevance and effectiveness will be made in consultation with the recognised trade unions.
58. Any amendments and additional rules imposing new obligations will only be introduced after reasonable notice has been given to all employees.



**APPENDIX 1****PERFORMANCE INDICATORS**

1. The management of breaches of discipline is being conducted effectively when:
  - (a) The Disciplinary Procedure is correctly applied and the nature and needs of the business and management processes of the Council are met;
  - (b) The Code of Conduct, Rules and Procedure have been brought to the attention of every employee;
  - (c) The person(s) authorised to act are competent in the exercise of their authority under the Procedure;
  - (d) All Chief Officers/Directors/Senior Managers/Managers/Supervisors handle the informal aspects of discipline with a view to improving unsatisfactory conduct and, wherever practicable, adopt a counselling approach in the first instance;
  - (e) Employees are suspended on full pay only when it is judged necessary. (See Section 7 Suspension Pending Investigation)
  - (f) Accurate notes and records are kept of all formal Disciplinary Investigations and Hearings, and Appeal Hearings and confidentiality maintained at all times;
  - (g) Dismissal without a previous warning and without notice is only affected in cases of gross misconduct where a proper investigation has been carried out and a Hearing held;
  - (h) Disciplinary decisions are notified to employees in writing within the specified timescale, giving reasons, the required improvement and drawing attention to appeal rights;
  - (i) Only person(s) authorised to act are involved in the conduct of Disciplinary and Appeal Hearings;
  - (j) Cases of unsatisfactory performance due to incapability (including ill-health), or basic unsuitability for the work involved and cases involving frequent or lengthy periods of genuine incapacity due to ill-health are dealt with initially under separate procedures. The latter stages of such procedures do however follow the same format as the Disciplinary Procedure.

**Methods of Monitoring**

1. Existence of a published Disciplinary Procedure.
2. Compliance of the procedures with statutory and case law principles.
3. Attendance as an observer at Disciplinary and Appeals Hearings.

4. Records of Disciplinary Investigations and Hearings.
5. Incidents, i.e. number and frequency of disciplinary actions analysed by reasons and other equality indicators.
6. Copies of Disciplinary Notices.
7. Outcome of Appeals Hearings.

**APPENDIX 2****LOWEST LEVEL OF MANAGEMENT AUTHORISED TO ACT UNDER THE DISCIPLINARY PROCEDURE**

<b>EMPLOYEE/ GROUP</b>	<b>WRITTEN WARNING</b>	<b>FINAL WRITTEN</b>	<b>DISMISSAL (INC ACTION SHORT OF)</b>	<b>OFFICER APPEAL</b>	<b>DISMISSAL APPEAL</b>
Director/Chief Officer	Councillor Disciplinary Panel			Councillor Appeal Panel	Councillor Appeal Panel
Senior Manager reporting direct to a Director or Chief Officer	Director/ Chief Officer	Director/ Chief Officer	Director/ Chief Officer	Independent Director/ Chief Officer	Councillor Appeal Panel
Employees reporting direct to a Senior Manager	Senior Manager	Senior Manager	Director/ Chief Officer	Independent Director/ Chief Officer	Management Appeals Panel
Other employees	Supervisor/ Line Manager	Senior Manager	Senior Manager	Director/ Chief Officer	Management Appeals Panel

NOTES: A Personnel Services representative will be in attendance at all Disciplinary and Appeal Hearings and have the right to ask questions of both parties. The representative will have had no prior involvement in the case.

## **APPENDIX 3**

### **PROCEDURE AT DISCIPLINARY AND APPEAL HEARINGS**

Note:

At the commencement of the Hearing the Chairperson may clarify the reason for the appeal and the remedy sought.

- (a) The management representative(s) shall put the case in the presence of the employee and his/her representative and may call witnesses.
- (b) The employee (or his/her representative) shall have the opportunity to ask questions of the management representative(s) on the evidence given by him/her, and any witnesses whom he/she may call.
- (c) The person(s) hearing the appeal may ask questions of the management representative(s) and witnesses.
- (d) The employee (or his/her representative) shall put his/her case in the presence of the management representative(s) and shall call such witnesses as he/she wishes.
- (e) The management representative(s) shall have the opportunity to ask questions on the evidence given by the employee and his/her witnesses.
- (f) The person(s) hearing the appeal may ask questions on the evidence given by the employee (or their representative) and his/her witnesses.
- (g) The management representative(s) and the employee (or his/her representative) shall have the opportunity to sum up their case if they so wish.
- (h) The management representative(s) and the employee and his/her representative shall withdraw.
- (i) The person(s) hearing the appeal shall, together with the Personnel adviser, deliberate in private.

In the event of uncertainty concerning evidence already given, both parties will be recalled, regardless of the fact that the point in question relates only to the evidence of one of the parties.

- (j) The decision of the Panel should, whenever possible, be announced to both parties at the conclusion of the Hearing.
- (k) The decision will be confirmed in writing by the Head of Personnel and Development or his/her representative within five working days giving reasons for the decision.

In all cases, the decision of the person(s) hearing an appeal is final.

**NOTE**

- (1) Only one witness to be present at a time and to remain only for the period relating to their evidence but to remain available for recall.
- (2) Where an appeal decision confirms a dismissal, the date of the dismissal will be the date originally notified to the employee, providing that notification complies with employment legislation. There will be no liability to pay the employee for the period between the dismissal and the disposal of the Appeal.
- (3) At least one person present shall record the proceedings.