

Disciplinary Policy

Waverley aims to help and encourage all employees to achieve and maintain high standards of performance and attendance by actively managing staff through clear processes and procedures. The Policy aims to ensure fair, equitable and consistent treatment of staff whose performance is below the required standard because of misconduct.

For issues of attendance, this policy should also be read in conjunction with the Absence Management Policy and/or Whistle Blowing Policy, where appropriate.

For issues of capability, e.g. cannot achieve a satisfactory level of performance or attendance through no fault of his/her own, for example as a result of poor health, please refer to the Capability Policy.

Overview

Discipline is essential to the continued well-being of the Council. Managers are able to apply sanctions against an employee whose actions are unacceptable and employees need to be aware that managers are dealing with such matters fairly and consistently.

The disciplinary procedure should not be viewed as only a means of imposing sanctions and is designed to emphasise and encourage improvement in an employee's conduct.

As described above, this policy aims to set Waverley's performance and attendance standards. If performance or attendance standards are not met, the option to dismiss remains, as a last resort.

NB:

- The procedures for Redundancy, Capability and Discipline for the Head of Paid Services are covered by the National Conditions of Service Handbook for Local Authority Chief Executives.
- Section 151 Officer and Monitoring Officer are not covered by the processes below. The procedures for Capability and Discipline for these posts are covered by the National Conditions of Service for Local Authority Chief Executives.
- Directors are not covered by the processes below and are covered by the National Conditions of Service for Local Authority Chief Officers.
- Trade Union Officials: employees holding Trade Union office are subject to the procedure below. However, no disciplinary action beyond an oral warning will be taken until the circumstances of the case have been discussed with a full-time official of the Union concerned. This does not, however, prejudice the right of the Council to suspend the employee concerned pending investigation, if that action is considered appropriate. The term 'Trade Union Official' refers to any employee holding elected office in a Trade Union recognised by the Council.

PROCEDURE

- This procedure is based on the ACAS Code on Disciplinary Procedures.
- Employees can expect to have regular discussions with their manager so that standards of performance or attendance can be discussed and reviewed.
- Any shortcomings in the employee's performance or attendance will be investigated and raised as promptly as possible with them and the underlying reasons discussed, with the opportunity to state their case before any decision is made.
- The investigation will gather factual, measurable evidence.
- Employees will receive appropriate support, coaching, training and resources to help them achieve and maintain a satisfactory level of performance within an agreed timeframe.
- The employee will have the right to be accompanied by a work colleague or trade union representative at all formal stages of the procedure.
- If the employee or accompanying person cannot attend a formal meeting, another meeting will be arranged, to take place within five working days of the original date. This timescale can be extended with mutual agreement.
- The employee will receive a written explanation of any action taken. If this is a warning, the employee will also receive an explanation of what improvement is expected, within what timescale, and when and how their performance/attendance will be reviewed and the consequence of the required improvement not being met.
- If an employee has difficulty reading, or if English is not their first language, the manager will explain the content of any written correspondence to them orally and/or use a translation service if appropriate.
- If the employee has a disability, all elements of the procedure will take this into account, including whether any reasonable adjustment is needed.
- The employee will have the right to appeal against any disciplinary penalty imposed.
- The procedure may be implemented at any stage that the Council reasonably requires.

Powers to Take Action under the Disciplinary Procedure

Action under this procedure may be taken by the following levels of manager supported by Human Resources:

(Please read the procedures detailed below before taking action)

Written Warning – may be given by a Line Manager to the employee subject to the disciplinary procedure and in consultation with the Head of Service.

Final Written Warning - may be given by the relevant Head of Service to the employee subject to the disciplinary procedure.

Suspension – may be decided by a Strategic Director.

Dismissal - may be given by a Strategic Director in consultation with the Chief Executive to the employee subject to the disciplinary procedure.

Disciplinary action against a Head of Service will be taken by a Strategic Director in the first instance.

The Leader of the Council and the Portfolio Holder for Human Resources will be informed of any formal action taken at the earliest opportunity.

Initial Review

The day to day supervision of employees is outside the scope of this procedure. It is the responsibility of all managers to monitor their staff and ensure that employees understand what is expected of them with regard to both work performance and attendance standards.

The first stage in dealing with poor job performance or attendance is to determine whether the matter is one of capability or misconduct. The Disciplinary procedure is used if the employee fails to reach the required standard of performance or attendance as a result of negligence, deliberate misconduct or deliberate lack of effort.

Investigation

Before disciplinary action is taken, an investigation will be carried out in order to gather factual, measurable evidence.

In many cases, the manager will carry out the investigation together supported by an Auditor and HR Business Partner.

In more complex or serious cases, the investigation will be carried out by an independent manager nominated by the employee's Head of Service supported by an Auditor and HR Business Partner.

The Council reserves the right to nominate any other person to conduct the investigation where it is considered appropriate.

The person leading the investigation is known as the Investigating Officer.

The employee will be notified in writing that an investigation is to be undertaken and that its purpose is to establish the facts and determine whether there is a case to be progressed under the Disciplinary Procedure.

(see also Section: Suspension)

The investigatory interview is not disciplinary action. The employee has the right to be accompanied by a trade union representative or work colleague.

The investigation will be conducted as quickly as possible and, in most cases, it will be expected to be completed within 20 working days. If this is not the case, the employee will be informed and given an explanation for the delay and informed when the investigation is expected to be completed.

As soon as is reasonably practicable after the conclusion of the investigation (normally within 5 working days), the employee will be notified in writing that the investigation is complete.

The Investigating Officer will decide, on the evidence gathered, whether there is a case to be progressed under the Disciplinary Policy.

The Investigating Officer would present the investigation to the Disciplinary Hearing.

Suspension

There may be instances where suspension with pay is necessary while an investigation is carried out. This would normally be in cases where the allegation if upheld would constitute gross misconduct.

Suspension will only be implemented after careful consideration by a Strategic Director and with the support from the HR Business Partner and will be kept under review. Suspension does not represent disciplinary action and does not involve any prejudgement or assumption of guilt.

Any decision to suspend will be confirmed in writing by the Strategic Director with support from the HR Business Partner. The written confirmation will state the nature of the allegation, that the suspension is precautionary and is not a disciplinary act, pending the outcome of the investigation and any subsequent disciplinary proceedings. Reference will be made to the Whistle Blowing Policy if relevant.

Disciplinary Hearing

The intention of the hearing is to ensure that every opportunity is given for the employee to state their case.

The line manager (or delegated representative), or in more serious or complex cases, the Strategic Director (or delegated representative), will notify the employee in writing at least 48 hours before a hearing takes place. If the allegations are serious and the employee requests more time to prepare their case, then a further 3 working days notice may be given. The letter will contain details of:

- The reason for the hearing
- A full copy of the investigation report
- The date, time and location of the hearing
- The right of the employee to be represented or accompanied by a Trade Union representative or some other person of their choice. If the representative is an employee of Waverley, Waverley will co-operate wherever possible to allow them time to attend the hearing. They should seek permission from their manager to attend.

The procedure for the Hearing will be as follows:

- (a) The disciplinary hearing will normally be conducted by the immediate line manager - except in an alleged case of gross misconduct when it would be conducted by a Strategic Director - together with the HR Business Partner (or their delegated representative).
- (b) The Investigating Officer will present the investigation report giving reasons why the employee's conduct is thought to warrant disciplinary action.
- (c) The employee will be entitled to ask questions relating to the alleged misconduct, to put their case and call witnesses.
- (d) The person accompanying the employee has the right to address the hearing to put the employee's case, sum up the case and respond on the employee's behalf, if the employee has indicated that they wish them to do so.
- (e) If the employee is unable to attend and it is reasonable to continue with the hearing, the employee's representative will be invited to attend and respond on behalf of the employee.
- (f) If the manager considers that further investigation or discussion is necessary, the hearing may be adjourned for a specific time.
- (g) At the conclusion of the hearing, the manager and HR Business Partner will adjourn to consider the information. In serious or complex cases, the adjournment will be until the following working day.

The employee will be informed of the decision verbally and in the presence of their representative and, if appropriate, their right of appeal.

The decision will be confirmed in writing by the manager, or for more complex cases, the Strategic Director, within five working days of the Hearing.

Performance (Formal: Stage One)

When the manager is concerned about an employee's performance or conduct, the manager should carry out an investigation (see above section: Investigation) to gather factual, measurable evidence and then hold a meeting (not a disciplinary hearing) with the employee to:

- discuss where the employee is not meeting the required standard of performance or conduct, with specific factual, measurable examples as evidence

The manager will:

- discuss what action is required to remedy the situation
- set specific targets and a timescale for improvement
- set a timescale for review
- explain that the formal process will apply if the performance or attendance standard is not achieved.

The manager will then give the employee an Improvement Action Plan in writing which will be regularly reviewed and assessed by the manager in conjunction with the employee. A copy of this Action Plan will be kept on the employee's personal file.

If the required performance standards are met, the manager will confirm this with the employee in writing and a copy will be kept on the employee's personal file.

If the required standard of performance is not met, the matter will be dealt with under the formal stage two of this procedure.

(Formal) Stage Two – First Written Warning

This stage applies where an improvement has not been achieved through the initial review. The line manager will write to the employee to detail the nature and evidence of the poor performance and the reasons why this is not acceptable.

The letter will invite the employee to a Disciplinary Hearing to discuss the problem and will inform them of their right to be accompanied by a trade union representative or work colleague.

At the meeting, the manager will discuss their concerns with the employee and confirm the required performance standards with the member of staff and a time period over which improvement will be expected.

The manager will also confirm how the individual's performance will be monitored and when review(s) will take place.

The manager will warn the employee that a failure to improve within the required timescale could result in a final written warning and ultimately, dismissal.

The employee will be advised of their right of appeal.

This information will be confirmed in writing by the manager to the employee as a first written warning no later than ten working days after the meeting. The written warning will state:

- the nature of the offence
- the decision that a first formal written warning is being given and that it will be recorded on the employee's file
- the period of time that the warning will remain on the employee's file
- the improvement required and the timeframe for this to take place
- the employee's right of appeal against this decision
- that the employee is advised to consult their Trade Union Representative or some other person of their choice

If the employee does appeal, an appeal meeting will be held and the employee will again have the right to be accompanied by a trade union representative or work colleague.

The employee will be informed in writing of the decision of the appeal.

NB: Where an employee is persistently unwilling or unable to attend a meeting, the Council will make a decision based on the available evidence, in the employee's absence.

A first written warning under this procedure will remain 'live' for six months, i.e. the performance standard set is to be achieved during that six month period. This may be extended in appropriate circumstances (e.g. where a period of training is required which will not be completed within six months or where a 12 month period is required to monitor sickness absence).

A copy of the letter will be kept on the employee's personal file until the process is no longer 'live' (i.e. the performance standard has been met) and thereafter will be removed and retained on a strictly confidential management file but will not be further used in any formal process.

If the employee's performance improves adequately within this period, then the process will terminate at this stage. The manager will confirm this with the employee in writing.

If performance remains unsatisfactory, then Stage Three of this procedure (final written warning) will be invoked by the manager. If it becomes apparent that the performance target has not been met, e.g. in the case of attendance, the next stage of the procedure would be invoked before the end of the 6 (or 12) month period.

(Formal) Stage Three – Final Written Warning

This stage can be applied where:

- a further offence occurs after a First Written Warning

or

- the first offence is such that it does not warrant dismissal but is serious enough to take stringent action.

The Head of Service (or designated representative) will write to the employee to detail the nature of the poor performance or attendance and the reasons why this is not acceptable. The letter will invite the employee to a Disciplinary Hearing to discuss the problem and will inform them of their right to be accompanied by a trade union representative or work colleague.

At the Disciplinary Hearing, the Head of Service (or designated representative), supported by Human Resources, will discuss their concerns with the employee and confirm the performance or attendance standards with the member of staff and a time period over which improvement will be expected. The Head of Service will also confirm how the individual's performance will be monitored and when review(s) will take place.

The Head of Service will warn the employee that a failure to improve within the required timescale could result in dismissal.

The employee will also be advised of their right of appeal. This information will be confirmed in writing to the employee by the Head of Service within ten days of the meeting.

A final written warning under this procedure will remain 'live' for twelve months, although this may be extended in exceptional circumstances such as where further concerns are raised about the employee's performance or attendance but these are not sufficiently serious to invoke Stage Four of this procedure (dismissal, demotion or redeployment) and the Council is able to reasonably expect that an extended period will enable the employee to reach the required standard of performance.

A copy of the letter will be kept on the employee's personal file until the warning is no longer 'live' and thereafter will be removed and retained on a strictly confidential management file but will not be further used in any formal process.

If the employee's performance improves adequately within this period, then this will be confirmed in writing by the Head of Service and the process will terminate at this stage.

If performance or attendance remains unsatisfactory, then Stage Four of this procedure will be invoked by the Head of Service. If it becomes apparent that the performance target has not been met, e.g. in the case of attendance, the next stage of the procedure would be invoked before the end of the 12 month period.

(Formal) Stage Four – Dismissal (or demotion or redeployment if available)

Where a further offence occurs after a final written warning or after a warning for a serious breach of discipline, the employee may be dismissed.

The Director (or designated representative) will write to the employee to detail the nature of the poor performance or attendance and the reasons why this is not acceptable.

The letter will invite the employee to a Disciplinary Hearing to discuss the problem and will inform them of their right to be accompanied by a trade union representative, work colleague or other person of their choice.

If, following the Disciplinary Hearing, it is considered that dismissal is warranted, the decision to dismiss will be made in consultation with the Chief Executive. The dismissal of an employee will be confirmed in writing within two working days, signed by the Strategic Director.

The written confirmation will state:

- the reason(s) for the dismissal
- the employee's right of appeal against the decision and that any appeal should be submitted within ten working days
- the period of notice and the arrangements for the completion of such notice
- that the employee is advised to consult their Trade Union Representative or some other person of their choice.

The Leader of the Council and the Portfolio Holder for Human Resources will be informed at the earliest opportunity of the action taken.

(Summary Dismissal – see below)

Gross Misconduct

Gross misconduct is a misconduct, whether by direct action or via the abuse of technology, of such a nature that the Council cannot reasonably allow the continued presence of the employee at the place of work and would therefore result in **summary dismissal** (see below).

Examples of gross misconduct which include examples which have led to the dismissal of local authority employees include:

- Unauthorised removal of Council property
- Stealing from the Council, its members, staff or the public or other offences of dishonesty
- Malicious damage to Council property
- Corrupt or improper practice i.e. where an employee uses their official position for private advantage or for the private advantage of some other person, or when an employee obtains benefit indirectly from a fraud carried out for the direct benefit of a third party
- Physical violence or bullying
- Serious misuse of the Council's property or name
- Deliberately accessing, on the Council's computer system, internet sites containing pornographic, offensive or obscene material
- Serious insubordination
- Unlawful discrimination or harassment
- Bringing the organisation into disrepute
- Serious breaches of health and safety regulations

This list is not exhaustive and it is acknowledged that there may be other offences of similar gravity which would constitute gross misconduct.

If in the light of preliminary investigation it is considered that the case is one of possible gross misconduct, a decision will be taken to either:

- Hold a disciplinary hearing to consider summarily dismissing the employee

Or

- Suspend the employee pending further investigations, followed by a hearing to consider dismissal if it is decided that an offence of gross misconduct has been committed by the employee.

In all cases of gross misconduct, the Strategic Director has the authority to dismiss. However, The Head of Strategic HR and the Chief Executive will be consulted before this decision is finalised.

The Leader of the Council and the Portfolio Holder for Human Resources will be informed at the earliest opportunity of any action taken.

Summary Dismissal

If the employee is summarily dismissed, the written confirmation (See Dismissal Section above) will confirm:

- The decision to summarily dismiss.
- The detail on which the decision was based.

- The fact that summary dismissal means that the final date of employment is the date on which letter is written.
 - With no contractual notice.
 - No payment of outstanding annual leave or flexi leave.
 - An invoice will be sent for any overpayment of salary.
- The right of appeal.

Appeal Procedure (Disciplinary)

Stage One or Stage Two (Appeal)

If an employee wishes to appeal against formal action taken against them under this procedure, they must write to the manager who conducted the disciplinary meeting, with specific reason(s) for the appeal and within ten working days of being notified of the formal outcome of the meeting.

The purpose of the appeal is not to re-hear all the evidence presented at the initial meeting but to consider the employee's specific grounds for appeal and decide whether the initial decision taken was reasonable and consistent with other decisions made by Waverley in similar circumstances.

The employee's Head of Service will identify another Senior Officer, normally either a Head of Service or Strategic Director, who has not previously been involved in the detail of the case or the meeting, to chair the appeal on behalf of Waverley and give a final decision.

The employee will be invited to an appeal meeting which will be arranged as soon as is reasonable practical – usually to take place within one month of the receipt of the appeal. They will be informed of their right to be accompanied by a work colleague or trade union representative.

At the appeal meeting, the Senior Officer chairing the appeal will consider the information presented at the original meeting, together with any new evidence presented, and will allow the employee to comment on this. Any documentation produced as evidence should normally be exchanged at least three working days prior to the hearing date.

The employee will present their case first and once both sides have presented their case, the manager chairing the appeal and their adviser will adjourn to consider the decision.

The Senior Officer chairing the appeal can withdraw the penalty imposed and/or impose a less penalty, but can not increase the penalty.

The outcome of the appeal will be confirmed in writing, to the employee and copied to the relevant Head of Service, by the Senior Officer chairing the appeal within five working days of the appeal hearing.

Dismissal (Appeal)

Appeal against dismissal should be made in writing by the Appellant or their representative, to the Strategic Director who notified them of the dismissal, within ten working days of receiving the letter terminating their employment. Their letter must

indicate the reason(s) for the appeal. The reason(s) will be confined to the evidence presented at the disciplinary hearing and/or the reasonableness of the decision. No new evidence will be accepted unless, in exceptional circumstances, both parties agree to do so.

On hearing the appeal, the panel may confirm the decision to terminate employment or amend the terms or decide to re-engage the employee from the date of the original decision to dismiss (so that there is no break in continuous service). The decision of the panel will be given at the Appeal Hearing and/or in writing within three working days of the Appeal Hearing.

There is no further right of appeal.

The procedure for the appeal will be as follows:-

- (a) the Chief Executive will appoint an Appeals Panel (the membership of the panel is prescribed in Part 3 of the Constitution relating to Responsibility for Council functions,) which will meet within 20 working days from the date the letter of appeal is received;
- (b) the Appellant will be given notice in writing at least five working days in advance of the time and place of the hearing and will be allowed to be represented by their Trade Union Representative or some other person of their choice and will be able to call witnesses and produce documents relevant to the hearing;

The parties present for the duration of the Appeal Hearing will be as follows:

- Appeals Panel, Adviser and Secretary to the Appeals Panel
- Appellant and representative
- Chair of the Disciplinary Hearing and HR representative(s)

If all parties agree, the Investigating Officer(s) will also be present for the duration of the Appeal Hearing.

The witnesses for the Appellant and/or the Chair of the Disciplinary Hearing will be called to answer questions by the above parties and then be asked to leave.

- (c) the Appellant (or representative) will put their case and call witnesses.
- (d) the other parties will have the opportunity to ask questions of the Appellant and their witnesses.
- (e) the Chair of the Disciplinary Hearing will put their case and may call witnesses to answer questions from the above parties, ask them to leave and sum up their case.
- (f) the Appellant will sum up their case.
- (g) the Appellant and their representative, the Chair of the Disciplinary Hearing, Investigating Officer and HR representatives will then withdraw;

- (h) the Appeals Panel, Adviser to the Appeals Panel together with the officer (who will not have been involved at any earlier stages of the process) appointed as Secretary to the Appeals Panel, will deliberate in private.

Where necessary, the Appeals Panel may require all other parties to be recalled if there are specific issues to be clarified.

At the conclusion of the hearing, the Appeals Panel will adjourn to consider the information. The adjournment will be until the following working day.

On hearing the appeal, the panel may:

- Uphold the decision of the Chair of the Disciplinary Hearing
- Amend and replace the decision of the Chair of the Disciplinary Hearing with an alternative decision
 - Re-instate and demote to a lower graded post
 - Re-instate and redeploy to an equivalent post (same terms and conditions of employment)
 - Reinstate to the same post with the same terms and conditions of employment

The Appeal Panel may decide to issue a final written warning with one of the above alternative decisions.

- Uphold the Appeal

The decision of the panel will be given at the meeting and will be confirmed in writing by the Chief Executive (or representative) on behalf of the Appeals Panel in writing within five working days of the meeting.

There is no further right of appeal.