



# Hampshire County Council

## Disciplinary Procedure

### Managing Misconduct

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# Hampshire County Council Disciplinary Procedure

## 1 Introduction

The County Council must rely on its employees to behave according to commonly accepted standards of behaviour and to comply with organisational, professional and workplace codes, standards, policies or procedures. The behaviour to which this procedure applies is defined as wilful, or negligent, misconduct or omission which falls below the standards required or is in breach of policy or rules.

The procedure sets out examples of misconduct and gross misconduct to assist in determining where unacceptable behaviour may have occurred (Appendix 2).

Much emphasis is placed on managers encouraging staff to avoid incidents of wilful or negligent misconduct through informal means by giving feedback, instruction and practical support or training. Where these attempts fail the disciplinary procedure provides a fair and effective framework whereby managers and employees can reach an appropriate outcome.

This policy applies to all staff covered under EHCC agreements. It does not cover staff who are employed directly by a school or governing body.

For an employee who has less than one year's continuous service with the County Council, the disciplinary procedure at Appendix 1 will apply.

No disciplinary action will be taken until the matter has been properly investigated.

At the formal stages of this procedure, the employee may be accompanied by a companion who is a trade union representative or a work colleague from within the County Council. Further guidance on the employee's right to be accompanied can be found at Section 5.1 [Right to be accompanied](#).

The employee must be provided with a copy of this document and any relevant appendices at any stage of the procedure.

The employee will not be dismissed for a first minor breach of discipline. In cases of serious or gross misconduct, the formal procedure will commence at the stage relevant to the seriousness of the misconduct.

In exceptional circumstances it may be necessary to suspend the employee from duty whilst an investigation is undertaken. Suspension will not take place unless there are reasonable and proper grounds which indicate that gross misconduct may have occurred. See Section 4.1 [Suspension](#)

The employee will not normally be allowed to raise a separate formal grievance related to any action taken, or contemplated, under this procedure. Such concerns will usually be managed within the hearing or appeal process detailed below.

This policy will be reviewed every three years or whenever a change in employment legislation necessitates a review, whichever is sooner.

## 2 Safeguarding

Issues of safeguarding of children or adults at risk are a special case. Whilst the principles of this procedure will apply, if any disciplinary matter arises that involves potential or actual abuse of children or adults at risk, action must first be taken to observe local and national safeguarding requirements, including the expectations of other agencies eg the police. This may include the employee not being notified immediately of the nature of an allegation until the consent of other agencies has been obtained.

If the disciplinary procedure is being followed due to an allegation in connection with a safeguarding issue which may in any way relate to children, please ensure that the Local Authority Designated Officer (LADO) has been contacted **immediately**, even if the allegation appears to be of a less serious nature. If the allegation is in connection with a safeguarding issue which relates to adults at risk, the Adult Services Safeguarding Team must be contacted.

It is important to consider the potential risk posed to children or adults who are at risk if a disciplinary procedure is being followed and the subject of the procedure has contact with children/adults at risk in any other paid or voluntary capacity (for example child minding, youth work or work with uniformed organisations etc).

The LADO should be involved in all cases in which it is alleged that a person who works with children has:-

- behaved in a way that has harmed, or may have harmed a child
- possibly committed a criminal offence against, or related to, a child or
- behaved towards a child in a way that may indicate that s/he is unsuitable to work with children.

The LADO or Adult Services Safeguarding Team should be involved in the management and oversight of individual cases of allegations against people who work with children or adults at risk and will provide advice and guidance on cases in liaison with key experts in Children's Services, the Police and Social Care. The LADO/Adults Safeguarding Team will monitor the progress of cases to ensure that they are dealt with as quickly as possible, consistent with a thorough and fair process.

## 3 Informal actions

### 3.1 Preliminary enquiry

When a concern first arises about a person's conduct at work the line manager will establish the initial facts regarding the matter by carrying out a brief preliminary enquiry and considering whether, on the face of it, attempts should be made to resolve the matter informally with the employee, or whether the matter appears

potentially more serious and may warrant a formal disciplinary investigation. The enquiry will be carried out as quickly as possible.

### **Possible outcomes**

- No apparent substance to the claim or concern
- The matter warrants an informal discussion with the employee
- The matter warrants further enquiries or a formal disciplinary investigation (see Section 4 [Investigation](#))
- The matter may be gross misconduct and suspension from duty is necessary pending further investigation. (see Appendix 2 – gross misconduct and Section 4.1 [Suspension](#))

### **3.2 Informal Discussion**

Circumstances will vary, depending on the alleged conduct, but wherever the matter does not require formal action, a one-to-one informal discussion will take place between the line manager and the employee.

The manager will explore the event or concern as soon as possible with the employee and seek their response. The manager will inform the employee of the conduct or standard expected and consider whether any training, development or support can be provided which may assist the employee. The manager will tell the employee that if there is any further misconduct this may result in formal action under the County Council's disciplinary procedure.

The employee has no statutory right to be accompanied at the meeting.

### **Possible Outcomes**

The employee is:-

- Provided with a clear explanation of why their conduct was unacceptable
  - Given clear guidance regarding the behaviour required in the future
  - If appropriate, advised of any support or training to be provided
  - Made aware that any malicious allegations could lead to appropriate action being taken against the employee making the malicious allegation
  - Made aware that failure to improve may result in formal disciplinary action
- Or
- The manager accepts the employee's explanation and no further action is required
- Or
- The manager determines that the matter requires further investigation

The manager will make a note that the meeting took place and the key outcomes of the meeting. The manager will share the key points with the individual and retain their own record on the personal file.

Often an informal discussion resolves the matter, but if, during the discussion it becomes evident that the matter may be more serious, the meeting will be adjourned. The manager will tell the employee that the matter will be subject to further investigation.

## 4. Formal Stages

### 4.1 Suspension

In cases of alleged serious misconduct, the employee will normally be expected to stay away from work by the manager for a short period while the preliminary enquiry is carried out to establish whether there may be a case to answer. As soon as possible, and normally, within a few days the employee will attend a meeting with senior management at which a decision will be made as to whether formal suspension from duty is appropriate.

If suspension is necessary, a letter confirming the suspension, and the reason for it, will be sent to the employee within **3 working days** of being notified of the suspension.

### 4.2 Formal Investigation

The investigation stage of the procedure is embarked upon if the matter is unable to be addressed at the informal stage.

To embark upon a formal disciplinary investigation the following initial action will be taken:-

- An Investigating Officer will be identified. This is usually the line manager, but may be another manager who will be identified by a more senior manager
- An HR colleague from the Employment Practice Centre will be assigned to the case to advise the manager through the process, if this has not already happened
- The employee must be made aware of their right to be accompanied by a companion who is a trade union representative or a work colleague from within the County Council.
- The employee must be made aware of the initial allegation/s and the disciplinary investigation before the investigation is started. In normal circumstances the employee will give their initial response to these allegations at a meeting held at the outset of the investigation, accompanied, if the employee wishes, by their companion. Further guidance can be found at 5.1 [Right to be accompanied](#)
- The employee will be provided with a letter confirming the initial allegations as discussed at the meeting. A copy of the procedure will be provided at the meeting or with the subsequent letter.

The Investigating Officer will then carry out their investigation, during which they will ensure:-

- That they make reasonable attempts to establish all of the facts pertinent to the allegation/s and gather evidence to support the facts

- That they meet with the employee at least once during the investigation to include the employee's own evidence and responses to the allegation/s

Please refer to the [Disciplinary Investigations Guidance](#) for further information

### **4.3 Outcome of investigation**

The Investigating Officer will write up the findings of their investigation in an investigation report, in a timely manner, which will clearly state the allegations and the evidence in support of them, or otherwise. All of the relevant documents gathered and referred to in the report will be appended to it.

Please refer to [Investigation Report](#) for a suggested report format.

The Investigating Officer will analyse the evidence and make recommendation/s to the relevant manager as to appropriate action, which may be:-

- No case to answer
- Informal discussion with manager
- No formal disciplinary action, but some other action, such as further training or recourse to another procedure
- That the matter will be referred to a panel to consider formal disciplinary action

If, during the course of the investigation, new allegations come to light the Investigating Officer will share this with the manager and the employee and continue with the investigation, including the new allegations.

The report will not include a recommendation regarding sanctions or level of warning other than a referral to the level at which the panel should be set up.

The report, together with all appendices will be forwarded by the Investigating Officer to the relevant manager for their confirmation as to further action. If they consider that formal disciplinary action is a consideration, the formal hearing stage of the procedure is then invoked.

## **5 Formal hearings**

### **5.1 Right to be accompanied**

The employee has the right, upon reasonable request, to be accompanied at a formal meeting or appeal by a 'companion', normally a trade union representative or a work colleague from within the County Council. The companion is allowed to make representations on behalf of the employee, submit papers, ask questions and address a meeting, but is not allowed to answer questions on behalf of the employee. It is the employee's responsibility to arrange their own companion and advise management of the name of the companion.

### **5.2 Formal meetings of the procedure**

There are 4 formal meeting stages within the procedure, as follows:-

- First formal stage meeting
- Final formal stage meeting
- Dismissal stage meeting
- Appeal meeting (please refer to Section 6)

### 5.3 Composition of meetings

Procedural Meeting	Heard by	Adviser
First formal stage	An appropriate Manager	HR advisers are not normally present at this stage unless specifically requested by the Manager
Final formal stage	An appropriate Manager	HR Adviser
Dismissal stage	2 senior Managers	HR Adviser

### 5.4 Disclosure of information

In the interests of natural justice, both parties are expected to provide all documents and other evidence that they will rely upon in support of their case in advance of the meeting. Management's documents will normally be despatched with the letter inviting the employee to a formal meeting. The letter will inform the employee that they have a right to produce their own written material for the meeting and call witnesses to support their case. The documents and witness names must be submitted to the chair of the panel, together with the detail of their companion to arrive no less than **3 clear working days** before the hearing

### 5.5 Invitation to a Formal Disciplinary Meeting

Following investigation, should it be decided that a formal hearing is required, the following actions will apply:-

- A letter will be written to the employee letting them know of the arrangements for the meeting, giving them at least **7 working days** notice
- The letter will include the allegation/s, the names of panel members and the names of others who may be in attendance such as management's witnesses, together with their purpose at the meeting
- Also enclosed will be all the written information that management wish to rely upon during the formal meeting and a copy of this procedure
- The letter will clearly state whether dismissal may be an outcome from the meeting and indicate which of the allegations this potentially applies to
- The letter will remind the employee of their right, upon reasonable request, to be accompanied at the meeting
- The letter will inform the employee of their right to produce their own written material for the meeting and call witnesses in support of their case. The documents, witness names and detail of their companion must be submitted to

the chair of the panel to arrive no less than **3 clear working days** before the meeting

- The letter will explain that if the employee needs special support or assistance during the meeting, for example a signer, an induction loop system, etc, they should notify the manager in advance of the meeting.
- The letter will remind the employee of their right to access to the Council's [Employee Support Line \(ESL\)](#) service.

If the employee, or their companion, is unable, for good reason, to attend the formal disciplinary meeting, an alternative date will be arranged, once only, normally within 5 working days of the original meeting date.

## **5.6 Conduct of a Formal Disciplinary Meeting**

Presentation of management's case at formal meetings will vary. In some cases it will be the relevant manager, supported by the HR Adviser. In others it will be a management advocate, who presents the case, accompanied by the relevant manager.

- The manager, or the management advocate, will present their case and call witnesses who will be open to questions by the employee or their companion.
- The employee or their companion will present their case and may call witnesses who will be open to questions by the manager or advocate.
- Both parties will be permitted to put re-examination questions to their own witnesses following their cross examination on matters raised in the cross-examination
- Panel members may ask questions of all participants in the meeting.
- Both parties are given an opportunity to summarise their case. Management, or the management advocate, will be given the opportunity to sum up first.
- The meeting will be adjourned for deliberation. If further clarification is required, both parties will be recalled.
- The employee will be notified of the decision and their [right of appeal](#) wherever possible at the end of the meeting

## **5.7 Possible Outcomes**

These include:

- No case to answer
- Informal management advice (see Section 3.2 [Informal discussion](#))
- First written warning
- Final written warning
- Dismissal

## **5.8 Confirmation of Decision**

### **5.8.1 Formal written warnings (first or final)**

Should a formal warning be issued, the decision will be confirmed in writing within **3**

**working days** of the issue of the warning, to include:

- The level of warning issued
- The reasons for the decision
- Instructions to the employee regarding their future conduct
- Details of any support to be provided
- The likely consequences of any further misconduct
- Confirmation that a copy of the letter detailing the written warning will be placed on the employee's personal file
- The [right of appeal](#)
- How to progress an appeal and the timescales for doing so
- The length of time the warning will remain active. An approximate guide may be 6-12 months for a first written warning and 12-24 months for a final written warning. The panel chair will determine the appropriate time period.

### **5.8.2 Dismissal**

Dismissal is likely to apply in cases where an employee's conduct remains unacceptable after a previous final written warning(s) has been issued, or there appears to be a case of gross misconduct.

Should the employee be dismissed the decision to dismiss will be confirmed in writing within **3 working days**, to include:

- The reasons for the dismissal
- Confirmation as to which of the following applies:-
  - summary dismissal (gross misconduct), or
  - dismissal, with notice, giving duration of notice and final date of employment (where previous final warning(s) in place)
- The right of appeal
- Confirmation as to how the employee can progress an appeal against the decision and the timescales for doing so
- The detail of any reporting obligation that the County Council is bound by such as the Independent Safeguarding Authority (ISA) and/or appropriate professional/regulatory body. Relevant papers will be retained indefinitely on the personal file.

## **6 Right of Appeal**

### **6.1 What the employee must do to lodge an appeal**

The employee, or their companion, must appeal in writing to the manager who signed the letter confirming the outcome of the disciplinary hearing, within **7 working days** of receipt of the letter.

The employee must state the specific grounds for their appeal in full.

## 6.2 Composition of Appeal Meetings

Appeal	Heard by	Adviser
Appeal against a first written warning	1 Senior Manager	HR Adviser
Appeal against a final written warning	2 Senior Managers	HR Adviser
Appeal against dismissal	Panel of County Councillors (arranged by the Chief Executives Department)	Legal adviser (Employment Law) Expert adviser as appropriate
1 <sup>st</sup> year of service - appeal against dismissal	2 Senior Managers	HR Adviser

At appeal stage the panel manager(s) will have had no significant previous involvement in the case and should be more senior in authority than the person who took the action being appealed.

## 6.3 Invitation to Appeal Meeting

### 6.3.1 Appeal against formal written warning

If the employee lodges an appeal in line with the procedure they will be invited to an appeal meeting and given at least **7 working days** notice of the meeting date. The letter inviting the employee to the appeal meeting must include details of their [right to be accompanied](#) at the meeting.

The date of the appeal meeting against a written warning will normally be within **2 weeks** of the date that the appeal letter was received.

Both parties will provide papers relating to the appeal to arrive at least **3 working days** in advance of the meeting to allow time for the information to be circulated and considered.

### 6.3.2 Appeal against dismissal

If the employee lodges an appeal in line with the procedure against dismissal, the appeal will be heard by a panel of County Councillors supported by a Legal Adviser. Arrangements for the organisation of the panel are made by the Chief Executives Department.

Both parties will provide papers relating to the appeal to arrive at least **3 working days** in advance of the meeting to allow time for the information to be circulated and considered. The employees papers must set out clearly all their grounds for appeal. The management papers will detail the management response.

## 6.4 Conduct of Appeal Meeting

The content of the appeal meeting will depend upon the grounds of the appeal submitted.

The panel will consider the information presented by all parties:

- The employee or their companion will present their appeal and may call witnesses who will be open to questions by the presenting officer..
- The presenting officer, will present the management response and may call witnesses who will be open to questions by the employee and/or their companion.
- Both parties will be permitted, to put to their own witnesses, further questions arising from the answers that witness gave to questions from the opposite side.
- Panel members may ask questions in respect of the presentation of the employee's appeal and/or the management response.
- Both parties are given an opportunity to summarise their case. The employee will normally summarise first. Where requests are made to differ from this order, the panel will decide. There should be no new information introduced during summing up.
- The meeting will be adjourned for deliberation. If further clarification is required, both parties or witnesses may be recalled.

The employee will be notified of the decision wherever possible at the end of the meeting

#### **6.5 Possible Outcomes**

- The decision of the previous formal meeting is upheld
- The decision of the previous formal meeting is not upheld and an alternative outcome is communicated to the employee.

There is no further internal right of appeal.

#### **6.6 Confirmation of Decision**

The employee will be informed of the panel's decision at the end of the meeting, if possible, and subsequently in writing, usually within **5 working days** of the decision being taken.

#### **6.7 Re-instatement after Dismissal**

If an employee is re-instated on appeal after dismissal has taken effect, the employee's service will be continuous and any loss of pay between dismissal and re-instatement will be paid.

### **7 Support**

The Employee Support Line is a confidential counselling and support service provided by trained, experienced counsellors, providing face-to-face counselling available throughout Hampshire. This service is available to all HCC staff, more

information can be found at <http://www3.hants.gov.uk/employeesupport.htm>, or by contacting the helpline on 02380 626606 or sending a confidential email to [eslhelp@hants.gov.uk](mailto:eslhelp@hants.gov.uk).

## **Annex 1      Less than one year's continuous service**

This procedure will be used for handling misconduct issues concerning employees in their first year of service. This applies irrespective of previous Local Government service or whether the employee is on a permanent or temporary employment contract.

It is expected that all new employees, during and after their induction, will have regular one to one meetings with their manager and that any concerns about the employee's conduct are raised at the earliest time.

If any disciplinary action involves potential or actual abuse of children or vulnerable adults refer to Section 2 [Safeguarding](#).

The relevant manager will conduct an appropriate level of investigation.

### **Formal meeting**

The line manager will adopt the same approach as set out in Section 5, following the process for potential dismissal. There is only one formal meeting for employees in the first year of service.

Outcomes from this can include:

- No case to answer
- Informal management advice (see Section 3.2 [Informal Discussion](#))
- A formal written warning
- The employee is dismissed on the grounds of serious or gross misconduct with the appropriate contractual notice
- Any unfounded allegation that may be malicious could lead to appropriate action being taken against the employee who made it

NB – the time period that a formal warning remains active in the first year of service will be shorter and will not result in the employment being extended beyond that year prior to a final decision being taken.

If any misconduct occurs following the issue of a formal written warning, there will need to be a further formal meeting to consider dismissal.

Should dismissal apply, notice in accordance with the contract of employment will be given, unless the dismissal is for gross misconduct, when dismissal will be without notice.

### **Right of Appeal against Dismissal**

During the first year of service, an employee only has the right of appeal against a dismissal decision; there is no right of appeal against a warning.

The employee must lodge an appeal as set out in Section 6.1. All appeal meetings will be set out in accordance with Section 6 of the main procedure, except that appeals in the first year of service will be heard by a panel of 2 senior managers.

## **Annex 2 Unacceptable Standards**

### **Misconduct**

Misconduct is defined as wilful or negligent misconduct or omission. Wilful misconduct can be summarised as lapses of conduct or unacceptable behaviour. It can also include unacceptable work performance if it is believed to be a wilful act. Negligent misconduct, or misconduct by omission, can be summarised as careless or reckless behaviour, or a failure to act which has a significant adverse impact on a service or an individual.

Examples of the types of conduct which are unacceptable and which could lead to disciplinary action are given below. However, they do not form an exhaustive or exclusive list, and other offences will be dealt with under this procedure.

- Failure to comply with the County Council's Code of Conduct, Professional Codes of Conduct, Standing Orders, departmental work rules and reasonable requirements.
- Failure to comply with health and safety requirements.
- Lapses of conduct - improper, disorderly or unacceptable conduct; unprofessional behaviour; insubordination, use of inappropriate language.
- Discrimination - failure to observe the requirements of the County Council's Equal Opportunities policy.
- Misuse of the County Council's equipment or IT systems – such as revealing passwords to others, loss of data/equipment, excessive or unauthorised use of any IT service for private purposes or wilful damage to property or equipment. Please see [IT security](#) for further information.
- Being under the influence of alcohol, illegal drugs or other substances.
- Misconduct at work or outside work (criminal or otherwise) which could discredit the County Council's reputation.
- Time-keeping/absence - persistent late attendance, inadequate timekeeping, abuse of flexible working systems or home-working arrangements.
- Unauthorised absence.
- Failure to report or record any material which is required to be reported or kept, improper disclosure of information.
- Significant breaches of data security policies or data protection standards.
- Failure to comply with the County Council's policies and procedures.

## **Gross Misconduct**

Gross misconduct is an act of misconduct or indiscipline which is so serious in nature that it will fundamentally damage the employment relationship and thus, will justify dismissal without notice. Each case has to be considered in the light of all of its circumstances, including the nature of the job and the details of the misconduct.

The examples given below show the type of misconduct that may be classified as 'gross'. However the list is not exclusive or exhaustive and other serious offences will be dealt with under this procedure.

- Theft, misappropriation, fraud, corruption.
- Deliberate falsification of records including financial claims.
- Fighting, assault on another person, physical violence, threatening behaviour.
- Sexual misconduct.
- Unlawful discrimination, harassment or bullying.
- Serious incapability through alcohol or being under influence of illegal drugs or other substances.
- Serious negligence that causes unacceptable loss, damage or injury.
- Serious act of insubordination.
- Inappropriate use of information technology, which may include accessing internet sites containing pornographic, obscene or offensive material
- Serious breach of specific departmental rules.
- Serious misconduct at work or outside work (criminal or otherwise) which could discredit the County Council's reputation.
- Misuse of County Council's property and assets - wilful or careless loss, damage to or misuse of equipment, property, assets, facilities, financial irregularities.
- Information - making false, misleading, malicious or inaccurate oral or written statements; unauthorised alteration or destruction of records or documents.
- Serious professional misconduct
- Serious breach of data security policies or data protection standards.