

	<b>PENKETH PARISH COUNCIL MANUAL</b>	
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**DISCIPLINARY  
AND  
GRIEVANCE PROCEDURES**

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## **Penketh Parish Council**

### **Disciplinary and Grievance Procedures**

#### **INTRODUCTION**

##### **Purpose**

The Council looks for and expects a high standard of behaviour and performance from all employees. The disciplinary procedure is important so that all employees understand what is expected of them, and so that employees are treated reasonably, consistently, and fairly.

##### **Scope**

All employees should be aware of the conduct that is expected of them and where there is misconduct prompt corrective management action needs to be taken by the relevant manager/the Council to encourage and enable the employee to meet the standards of behaviour and performance.

The aim is to deal with problems of conduct as early and informally as possible and this should be seen as part of the normal responsibilities of managers/the Council. However, the formal disciplinary procedure should be used when, even after appropriate management action, the misconduct or unsatisfactory standards of behaviour persists, or because of the nature of the actions, the situation is likely to require formal warning or more serious disciplinary action. Where fraud or bribery is suspected, or financial irregularities are identified the Internal Auditor must be informed by the Council.

The policy may also extend to conduct outside of the workplace if it is thought likely to affect the continued employment relationship, the ability of the employee to do their job, and/or brings the reputation of the Council into disrepute or frustrates the contract.

##### **Policy Statement**

Appropriate standards of behaviour and conduct are always expected of all employees of the Council. It is important therefore, that suitable rules and procedures operate which promote order, fairness, and consistent practice in the treatment of individual employees and in the setting of standards of performance and conduct. This policy is in place to ensure a fair and consistent approach to employees during the disciplinary process.

#### **ELIGIBILITY/EXCLUSIONS**

This policy will apply to all employees of the Council.

#### **DEFINITIONS**

##### **Working Days**

For the purpose and application of the procedure detailed in this policy, working days will be classed as Monday to Friday (excluding Bank Holidays).

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#### **The Council**

Unless otherwise stated this term refers to Penketh Parish Council.

#### **Misconduct**

Examples of misconduct, which would normally justify the use of the Disciplinary Procedure has been attached as Appendix 1.

#### **Gross Misconduct**

Examples of serious offences that constitute acts of gross misconduct and potentially could lead to an employee's dismissal have been attached as Appendix 1.

Where misconduct is related to inappropriate conduct towards a child or vulnerable adult and it is perceived that the Individual may pose a risk to children or vulnerable adults, details of the offence will be passed to the relevant external authorities by the Council.

Similarly, where the misconduct is of a very serious nature, e.g. theft, fraud, details of the offence will be passed to Internal Auditor who may subsequently refer the matter on to external authorities, for example the police. Where money laundering or bribery are suspected the Council will refer the matter to the appropriate bodies

Neither of the two lists contained on Appendix 1 are exhaustive and one test that should be asked when determining if there is a potential for a misconduct allegation "Would a reasonable person be aware that disciplinary action would result from a certain act or omission?"

#### **Conduct Outside of Work**

The Council does not seek to dictate how employees conduct themselves in their personal lives outside work. However, unlawful, anti-social or other conduct by employees which may jeopardise the Council's reputation or position will be dealt with through the disciplinary procedure. Examples of such behaviours are listed in Appendix 1

#### **Cases of Alleged Criminal Activity**

A disciplinary investigation may run in parallel to any external investigation if necessary (e.g. police. child protection etc), but should not be held up by it, unless it is prejudicial to those investigations to proceed. Case law clearly indicates that it is not always necessary to await the outcome of any court hearing before deciding on disciplinary action.

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#### ACCOUNTABILITIES

##### 1. Employees:

- All employees should make themselves aware of and comply with the Council's policies and procedures.
- All employees have a contractual rules, policies, and procedures responsibility to be aware of and to conform
- Carry out their role to the standards expected
- Understand the impact of their behaviour on colleagues and clients of the Council
- Clarify expectations, behaviours, and procedures with their manager if they are unsure about them
- Co-operate fully and promptly if they are asked to be involved in a disciplinary case, this may include giving evidence in an investigation
- There is a requirement for employees to declare any conflict of interest that arises if they are involved in disciplinary matters.

##### 2. The Council:

- Will make all employees fully aware of all employment policies and procedures
- Provide consistent and fair treatment of disciplinary matters
- Act promptly when potential disciplinary matters arise
- Deal with any breach of discipline appropriately
- Investigate the facts fully before taking any disciplinary action against employees
- Advise employees in writing at all stages of the formal procedure of the alleged misconduct and give them the opportunity to state their case and present any evidence or mitigating factors before a decision is reached
- Allow employees the right to be accompanied by a workplace colleague or trade union representative
- Give employees reasonable notice of any disciplinary meetings, which will take reasonable time and location
- Give employees the right to appeal against disciplinary action taken.
- Fulfil their obligation in hearing disciplinary cases, when required to do so

##### 3. Managers:

- Seek professional advice in a timely manner
- Be responsible for setting and maintaining standards of performance
- Adhere to this policy and procedure
- Conduct a fair and objective process and investigation
- Set a good example through their own conduct and behaviour.

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#### 5. Trade Union:

- Work with Managers and support employees during the process
- Be available to undertake the role of 'The Companion' when asked

#### 6. Investigating Officer

- An Investigating Officer will be responsible for conducting a thorough investigation, providing a comprehensive written report on completion of the investigation and presentation of that report, and supporting evidence at any subsequent disciplinary hearing.

### PROCEDURE

The Disciplinary Procedure comprises of the following stages, where applicable:

- Informal Stage (where appropriate)
  - Informal Resolution
- Formal Stages
  - Investigation (including suspension where necessary)
  - Hearing
  - Sanctions
    - Formal Stage 1 - Written Warning
    - Formal Stage 2 - Final Written Warning
    - Formal Stage 3-Dismissal with Notice or Summary dismissal
    - Additional Sanctions may be added to the above warnings in exceptional
  - Appeal. circumstances: as alternatives to dismissal, sanction appropriate to the offence.

No formal disciplinary action will be taken against an employee until the circumstances have been fully investigated. Employees will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made. At all formal stages of the procedure the employee will have the right to be accompanied by a workplace colleague or trade union representative. An employee will have the right to appeal against any disciplinary sanction imposed.

#### Raising a Grievance during the Disciplinary Process

Where an employee raises a grievance during a disciplinary process, not relating to the disciplinary matter, the disciplinary process may be suspended to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both cases concurrently.

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#### Resignation during an investigation or before a Disciplinary

If the employee, resigns either during a disciplinary investigation or prior to a disciplinary hearing then the Council will reserve the right to continue with the investigation and/or hearing despite the resignation.

The results of any findings/decision will be held on the employee's personnel file and any appropriate actions taken in line with the Disciplinary policy.

#### Meeting with Vulnerable, Disabled, Special or other groups

- Within a disciplinary process, vulnerable individuals will only be interviewed or asked to attend meetings in the presence of a Companion.
- Reasonable adjustments will be made for special groups or employees who have a disability. in accordance with the Equality Act 2010 for example providing wheelchair access for a disabled employee.
- Cultural and/or gender issues should also be given consideration

#### Criminal Conviction/Imprisonment

An employee who receives a criminal conviction or imprisonment may be dismissed, however each case will be determined on its own merit. The Council's Disciplinary Policy, including undertaking an internal investigation, will be followed on all occasions.

#### Informal Stage

Over day to day activities there will be occasions when managers/the Council will need to advise employees informally of minor breaches of discipline/conduct. In some situations, providing guidance and counselling on an informal basis can be a more appropriate method of resolving issues than proceeding to formal discipline. The advantage of this approach would be to resolve the problem under consideration or correct the inappropriate behaviour as quickly as possible to reduce the risk of disruption of a team, de-motivation and absenteeism for example.

At informal stage meetings the manager/the Council should:

- Investigate the circumstances Set the standard of expected behaviour and conduct required
- Training needs may be identified, and a programme of learning and development may be implemented, with consultation and support from appropriate training resources. The timescale for this training programme will depend on individual circumstances of each case
- Set out the consequences of any further proven misconduct
- Set a reasonable period for the employee to demonstrate good conduct or proper behaviour
- Monitor continuously and give feedback to the employee
- Warn the employee that failure to achieve the required standards of behaviour/conduct will lead to the formal part of the Disciplinary Procedure being implemented.

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The manager/the Council will take notes of the meetings, including any agreed actions as, should the behaviour or conduct continue and move to Formal Disciplinary Procedure, these records will be important evidence. Whilst the employee should be made aware that brief notes have been taken, they should also be advised that they are for the manager's record only at this stage and that they will be kept confidential but remain in place for a period of 6 months. The Manager/the Council will confirm the outcome in writing.

#### **Formal Procedures**

##### **1. Authority to Act**

The Council will take the decision on whether to launch a disciplinary investigation (taking professional advice as appropriate) and will appoint the Investigating Officer. The Council will also authorise any suspension of an employee where deemed appropriate.

The investigating officer will be responsible for investigating the disciplinary allegation and preparing a report with their findings.

The Disciplinary Panel will decide on whether a person is guilty of a discipline offence having considered evidence supplied by the investigating officer and the employee.

Managers involved in disciplinary processes as investigating officers will, from time to time, receive training in relevant skills to ensure their ongoing competency to deal with disciplinary issues.

- In exceptional circumstances it may be appropriate to bring in an external independent party to conduct some aspect of the disciplinary process. The Council reserves the right to make this decision if the circumstances are appropriate and to ensure there is complete objectivity and transparency in the process.

##### **2. Investigation Process**

When a potential disciplinary matter is identified (which is more serious than that which would be dealt with informally), an Investigating Officer will be nominated by the Council. The employee will be given a letter confirming that an allegation has been made against them, details of the allegation; that there is to be an investigation and who the investigating officer is. In the majority of cases such written confirmation will be issued at the commencement of an investigation but in some cases e.g. potential fraud (or where evidence is behaviour based and evidence needs to be collected before the person is informed e.g. attendance), it may be appropriate not to inform the employee at the commencement of the investigation. Investigations may require the interviewing of third parties and witnesses to gather evidence and provide contextual information. In these circumstances the employee will be informed as soon as practicable.

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Investigation meetings are not disciplinary hearings and employees do not have the statutory right of representation; however, the Council will offer employees the opportunity of being accompanied by a companion on all occasions. Guidance on the role of a companion is given later in this policy.

The Investigating Officer will investigate the matter, interview witnesses, and gather documentary evidence as appropriate, then prepare a report giving the outcome of the investigation and make one of the following recommendations to the Council either

- That no further action to be taken or
  - That Informal Action may be required: e.g. counselling, keeping under review, management action, training etc. or
  - That a disciplinary hearing should be held

\*NB: If deemed appropriate by the investigating officer interviews with witnesses may be recorded to facilitate accurate notes.

Once the findings of the investigation have been presented to the Council, they will determine whether they are in agreement with the findings of the Investigating Officer and what action will be taken as appropriate and in line with the Council's Disciplinary procedure.

The employee will be advised of the outcome in writing.

Guidance for investigating offences; conducting interviews and preparing the report are found in Appendix 2 and guidance on Preparing Evidential Papers for a Disciplinary Hearing can be found in Appendix 3.

### **3. Suspension from Work**

The Council may decide to suspend an employee from work pending the investigation. Suspension is most likely to be appropriate where the continued presence of the individual at work would pose a risk to themselves or others or where the employee would have an opportunity to frustrate the investigation by destroying or compromising evidence. As an alternative to suspension, it may be considered more appropriate to request the employee to undertake alternative duties which remove them from their normal workplace or to work from home whilst the investigation is conducted.

Suspension is not disciplinary action. Any such suspension will be with pay and the duration will vary according to the situation, but timescales will be as short as reasonably possible. The employee will be given a letter explaining the reason for suspension, will be required to hand in any door passes and keys for working premises and will not have access to the Councils computers for the duration of the suspension. They will also be made aware that they must be available to take calls or attend work for investigation meetings, at short notice.

A Suspension from Work Q&A has been attached as Appendix 4.

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#### 4. The Disciplinary Hearing

If the Council accepts a recommendation to proceed to a full disciplinary hearing this will be convened in accordance with the arrangements described below.

The intention of the Hearing is to give the employee every opportunity of stating their case and to allow the Disciplinary Panel to consider all relevant information before making a final decision. Guidance on the conduct of a disciplinary hearing has been attached as Appendix 5.

The employee will be notified in writing at least 5 working days before the Hearing takes place, this notice may be extended to allow an employee to be represented.

The notification will include:

- the fact that there will be a Hearing held under the Council's disciplinary procedure
- the reason for the Hearing
- the date, time, and place of the Hearing
- the right of the employee to be accompanied
- an indication of who are expected to be three Councillors on the Disciplinary Panel
- the reason why the employee's conduct is thought to warrant disciplinary action, supported by documentary evidence and witness statements
- an offer of external support/counselling.

Any information to be presented at the Hearing by either side should be available to all parties at least 5 working days in advance of the Hearing meeting.

Every effort is made to arrange the timing of a hearing, such that it is suitable for all involved parties. However, it should be noted that where an employee is persistently unable or unwilling to attend a disciplinary meeting, the Council will have no option than to make a decision based on the evidence available.

- Sickness may be a reason given for non-attendance but is only valid if the employee is genuinely too ill to attend a formal meeting or disciplinary hearing. An employee may be too sick to work but fit enough to attend such a meeting. An occupational health referral must take place if the employee is certificated as sick by their general practitioner or specialist. A hearing can take place in the employee's absence or the employee can nominate a representative to attend on their behalf.

Once all the evidence has been provided to the Disciplinary Panel, the meeting will ordinarily be adjourned whilst the Disciplinary Panel reaches a decision. The length of the adjournment will be agreed at the Hearing meeting, although should be kept to a minimum.

The outcome of the Hearing will be conveyed as soon as possible. If it is not possible to confirm the outcome on the same day, the employee will be given an anticipated time scale for confirmation of the outcome and a subsequent meeting will be arranged to convey the decision. The decision will then be confirmed in writing.

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#### **5. Formal Stage 1 - Written Warning**

If, following a disciplinary Hearing meeting it is concluded that an employee's conduct is unsatisfactory and amounts to misconduct, the employee will be issued with a Formal Written Warning. A letter will be sent to the employee giving the reason for the warning, explaining what improvements are required and their rights of appeal. The letter will also explain the potential consequences of any further offence. The letter will usually be sent within 5 working days of the disciplinary meeting wherever possible but without unreasonable delay.

The employee will also be informed that a copy of the notice of Formal Written Warning will be held on their personnel file, both hard copy and electronic, in accordance with The Data Protection Act. It will remain in force for a period of 12 months and will ordinarily be considered spent after this time, subject to no further disciplinary incidents occurring during this period.

#### **6. Formal Stage 2-Final Written Warning**

This sanction may be issued if the first offence is serious enough to warrant action at this level. Alternatively, it may be issued after a Written Warning depending on the severity of any subsequent misconduct or the failure to achieve required standards of performance/conduct.

The employee will be issued with a Final Written Warning and this will be notified to them in writing, giving the reason for the warning and explaining what improvements are required and their rights of appeal. This will usually be sent within 5 working days of the disciplinary meeting wherever possible but without unreasonable delay.

The employee will also be informed that a copy of the notice of Final Written Warning will be held on their personnel file, both hard copy and electronic, in accordance with The Data Protection Act. It will remain in force for a period of twenty-four months and will ordinarily be considered spent after this time, subject to no further disciplinary incidents occurring during this period.

#### **7. Formal Stage 3-Dismissal with Notice or Summary dismissal**

Dismissal will normally be contemplated where either an employee has previous warnings or a further finding of misconduct is made against them or where the offence amounts to gross misconduct.

Where further serious misconduct follows previous warnings, an employee may be dismissed with notice.

If, after investigation, an employee is found to have committed an act of gross misconduct, the normal consequence will be summary dismissal.

The employee will be given written reasons for dismissal, the date of termination of their employment, and notice of the right to appeal.

In exceptional circumstances substantial mitigation may exist and a final written warning is given as an alternative to dismissal

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#### 8. Additional Sanctions

Alongside formal sanctions, additional sanctions, may be considered at the absolute discretion of the Council and in exceptional circumstances and provided that the employee (after full consultation with their representative) agrees to this exceptional course of action.

Where formal written warnings are issued because of a disciplinary hearing the Council may also apply additional sanctions. The Council may use one or more of the following, depending on the circumstances:

- Suspension for a period without pay
- Loss of increment
- Recovery of costs.
- Temporary cessation of pay,

These alternatives, short of dismissal, mentioned above are not exhaustive and the Council reserves the right to take any action it considers reasonable and appropriate in the circumstances.

#### 9. Right of Appeal

The employee has the right to appeal at all formal stages of the procedure. There will not be a delay in implementing management decisions pending an appeal, but they may be subsequently amended because of the appeal hearing.

- Appeals must be lodged in writing, clearly stating the grounds for appeal, with the Chairman of the Council as soon as possible, without unreasonable delay but within 10 working days of receipt of the letter advising what formal action has been taken.
- The appeal hearing will normally take place within 20 working days of receipt of the letter or without unreasonable delay, dependent on the availability of Councillors
- The employee has the same right of representation at an appeal meeting as during the formal stages of the procedure.
- To ensure impartiality, the appeal will be heard by three different Councillors from those previously involved in the Disciplinary meeting(s)
- Following the appeal meeting the employee will be sent a letter advising the outcome of the appeal. This will be sent without unreasonable delay, usually within 5 working days.

This is the final stage of the formal Disciplinary Procedure.

#### **The Right to be accompanied: The role of the companion**

The employee has a statutory right to be accompanied to disciplinary hearings under this procedure either by a Trade Union representative or a workplace colleague. There is no statutory right to be accompanied to investigatory meetings, but the Council has decided that anyone attending any meetings under the formal procedure will be permitted to have a companion if they so wish. Family members and friends are specifically excluded unless they happen to be a trade union representative or colleague.

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- When choosing a companion, the employee should avoid nominating someone whose presence may prejudice the hearing or who might otherwise have a conflict of interest.
- A person requested by an employee to accompany them does not have to do so. However, where a person does agree to accompany an employee to their disciplinary meeting the companion will be permitted reasonable paid time off work to do so.
- Anyone who agrees to accompany an employee must be aware that anything they see or hear during the meeting(s) must remain confidential and must not be discussed with any third party.
- Where the employees chosen companion is not able to attend on the date agreed for the disciplinary meeting, an alternative date should be proposed by the employee, this would normally be within 5 days from the date the disciplinary meeting was arranged. As far as reasonably possible, the location and timing of any meeting will be convenient to the employee, the companion, and the manager.
- The companion will be allowed to address the disciplinary meeting to put forward and sum up the employees case, respond on behalf of the employee to any views expressed during the meeting and confer with the employee during the meeting. The companion does not, however, have the right to answer questions on behalf of the employee, address the meeting if the employee does not wish it or prevent the Chairman of the Disciplinary Panel explaining the case. An exception will be made in special circumstances such as situations where a person has difficulty in conducting their own case because of their disability or because their first language is not English.

The Council can reject an employee's choice of companion, in exceptional circumstances, (including Trades Union Representative) if it is unreasonable for him or her to request to be accompanied by that person. This may be the case, for example, if the companion is involved in the proceedings, or because he or she will not be available for a meeting for a substantial length of time.

#### RECORDS

It is important to keep written records during each part of the disciplinary process. These records will include:

- details of the alleged misconduct
- the Councils response
- action taken
- reasons for action taken
- copies of all file notes from the Hearing and if applicable appeal meetings
- copies of all letters in relation to the employees alleged misconduct

All records will be kept confidential and retained on the employees personnel file, both electronic and hard copy, in accordance with the data Protection Act.

Copies of the Formal Stage Warnings will be held on file as detailed below and will be considered as 'spent' after this time providing conduct and/or performance is satisfactory:

- Formal Written Warning-12 months
- Final Written Warning-24 months

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Please Note-Where misconduct is related to inappropriate conduct towards a child or vulnerable adult and it is perceived that the individual may pose a risk to children or vulnerable adults, details of the offence will be passed to the Independent Safeguarding Authority by the Council.

The Council is obliged to report to the appropriate statutory or professional body any serious act of misconduct or gross misconduct where appropriate. Similarly, it will consider referring all cases of criminal activity to the police.

#### OTHER SOURCES OF INFORMATION

##### 1. Related internal policies

- Grievance policy
- Code of Conduct for Employees (when adopted)
- Attendance Management policy (when adopted) Capability Policy (when adopted)
- Harassment and Bullying policy (when adopted)

##### 4. External Sources

Further advice regarding the disciplinary process can be found on the following websites:

ACAS: [www.acas.org.uk](http://www.acas.org.uk)

Government information Website: [www.gov.uk](http://www.gov.uk)

Please note that the Council takes no responsibility or liability for any material produced by or contained in external sites or for any advice or services given by external organisations. It is the responsibility solely of each person to decide whether they use any such material, advice, or service.

#### LEGISLATIVE FRAMEWORK

- **Employment Act 2008**
- **Employment Relations Act 1999**
- **Data Protection Act 1998**
- **Employment Rights Act 1996.**
- **Safeguarding Vulnerable Adults Act 2006**
- **ACAS Code of Practice Disciplinary and Grievance Procedures** - whilst not, in themselves, a legislative requirement, these procedures outline good practice in dealing disciplinary matters in the workplace.

#### REVIEW STATEMENT

Save as required by law, the Council reserves the right to periodically review this policy.

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#### **EQUALITY AND DIVERSITY CONSIDERATIONS**

All employees are responsible ensuring that they operate the procedure in line with the Council's Equality and Diversity policy to provide equality of opportunity for all employees.

The Council is committed to ensuring that no-one is discriminated against, disadvantaged or given preference, through membership of any particular group, particularly based on age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity. This procedure will be applied equally to all employees irrespective of their background or membership of a particular group.

The application of this policy and procedure will be subject to an equality impact assessment to ensure that it does not discriminate either positively or negatively in relation to the above groups either directly or indirectly. The Council will regularly review this policy's impact on any equality and diversity issues and will identify any inequalities by monitoring and will take appropriate action where necessary.

#### **APPENDICES**

- Appendix 1 - Guidance on Examples of Misconduct and Gross Misconduct Offences
- Appendix 2 - Guidance on undertaking an investigation and preparing an investigation report
- Appendix 3 - Preparing Evidential Papers for a Disciplinary Hearing
- Appendix 4 - Suspension Frequently Asked Questions
- Appendix 5 - Guidance on the conduct of a Disciplinary Hearing
- Appendix 6 - Disciplinary Frequently Asked Questions

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#### Appendix 1

#### Guidance Note on Examples of Misconduct and Gross Misconduct either during or outside work.

##### Misconduct

The following are examples of misconduct, which would normally justify the use of the Disciplinary Procedure. The list, which is neither exhaustive nor exclusive and, depending on the precise circumstances, any act listed below may be considered so serious as to be regarded as Gross Misconduct:

- Persistent lateness.
- Unauthorised absence from work
- Intentional disregard of legitimate instructions from a manager/the Council Failure to observe safe working practices at work, including failure to wear personal protection equipment (PPE), breach of smoking policy
- Failure to obtain qualifications/re-qualifications as required by the job description/person specification
- Failure to obtain or retain professional membership as required by the job description/person specification
- Failure to co-operate with disciplinary cases, including withholding of information known to be pertinent to the case
- Criminal conduct
- Making vexatious complaints or grievances
- Failure to adhere to the Councils Code of Conduct-when adopted
- Misuse or unauthorised use of Council resources for example, vehicles, equipment, or facilities
- Conduct in the workplace that has a negative impact on work, colleagues, or service delivery. (for example, poor personal hygiene)
- Purporting to represent the views of the Council on social networking sites without prior approval or authorisation
- Failing to act when acts of discrimination are witnessed

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#### Gross Misconduct

The following are examples of serious offences that constitute acts of gross misconduct and potentially could lead to an employee's dismissal. This list is neither exhaustive nor exclusive:

If an employee commits an act of gross misconduct the Council has the right to dismiss the employee without serving them with their contractual notice, subject to a formal investigation and hearing.

- Repeated misconduct offences
- Corruption, bribery, theft, or fraud.
- Serious act(s) of dishonesty.
- Deliberate damage to the Council's equipment, computer systems or buildings.
- Serious negligence or breaches of health and safety rules causing, or the potential to cause, significant loss, damage, or injury.
- Unauthorised use or disclosure of official information
- Accessing material on the Internet of an inappropriate nature such as sites containing pornographic, sexist, racist, indecent, rude, obscene, or violent material
- Bringing the Council into serious disrepute.
- Deliberate falsification of Council documents
- Misuse of, or damage to, Council property. Serious breach of safety regulations endangering oneself and/or others
- Serious acts of bullying, harassment, violence or assault against a colleague, client, or member of the public
- Criminal offences which are related to, or impact on an employee's ability to fulfil the terms of their contract, or are incompatible with an employee's role, or have the potential to damage the reputation of the Council
- Being unfit for work through alcohol or drugs or working whilst under the influence of alcohol or drugs \*
- Discrimination against Council employees or members of the public in breach of the Council's equality and diversity policies Corrupt or improper practice involving children or vulnerable adults
- Using social network sites to make derogatory comments about other organisations or individuals in relation to their employment/work activity
- The posting of photographs on social networking sites, or the distribution of photographs, that could bring the Council or/and its officers into disrepute and/or harm.
- Significant loss of public money or property for which the employee is responsible.
- Negligence whilst carrying out duties on behalf of the Council
- Wilful neglect to obtain/retain the professional qualifications or membership as required by the job description.
- Failure to disclose any caution or conviction as required under the Rehabilitation of Offenders Act.

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- Supplying and/or trafficking or drugs, money laundering activities, or the sale or distribution of illegal substances or products.
- Serious negligence which causes unacceptable loss, damage, or injury, or acting in a manner dangerous to others.
- Unauthorised entry to computer records and deliberate misuse of the Council's computer resources and telephone services.
- Serious breach of any of the Council policies and procedures such as Financial Regulations or Contract Procedure Rules.
- Fraudulent claims made within job applications particularly in relation to qualifications, experience, or job history.

\*Please note - In certain cases drugs prescribed by a doctor or purchased from a chemist can induce drowsiness and will include the advice not to operate machinery. Employees must inform their manager if they have taken such medicine and would normally be required to operate machinery or drive a vehicle during their work.

Where misconduct is related to inappropriate conduct towards a child or vulnerable adult and it is perceived that the individual may pose a risk to children or vulnerable adults, details of the offence will be passed to the relevant external authorities by the Council

Similarly, where the misconduct is of a very serious nature, e.g. theft, fraud, details of the offence will be passed to the Internal Auditor who may subsequently inform external authorities for example the police.

#### **Behaviour out of Work**

The Council does not seek to dictate how employees conduct themselves in their personal lives outside work. However, unlawful, anti-social or other conduct by employees which may jeopardise the Council's reputation or position will be dealt with through the disciplinary procedure.

Examples of unacceptable standards:

- unauthorised employment, e.g. engaging in unauthorised employment during hours when contracted to work for the Council or engaging during off-duty hours in employment that is detrimental to the interests of the Council.
- engaging in political activity whilst occupying a politically restricted post, as defined in the Local Government and Housing Act 1989 (e.g. acting as a party election agent or sub-agent, failure to give notice of an intention to stand in a pending general or parliamentary by-election)
- neglect of health (e.g. activities or conduct which seriously affect your recovery during sickness)
- conviction for a criminal offence that is inconsistent with the position held by the employee
- A breach of the Council's Code of Conduct-when adopted.
- When an employee makes comments public on any social media site (including Facebook, Twitter, etc), or emails they abandon any rights to have their comments treated as private and therefore can abandon any right to freedom of expression and to have their comments treated as private under the European Convention on Human Rights. The Council's interference with the right to respect for private and family life, and the right to freedom of expression can in some circumstances be justified (for example in protecting reputation or confidential information).

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The Council will treat 'electronic behaviour in the same way they would treat 'non-electronic behaviour and any found breaches of the council's policies and procedures will be dealt with under the Council's Disciplinary Policy:

- Defamation employees posting or sending damaging or libellous comments about an organisation or their products/services or publishing sensitive commercial data
- Employees divulging protected personal data for example giving away details of salary, political or religious beliefs or disciplinary records.
- Cyber-Bullying: bullying, harassment and victimisation conducted via social networking channels often using blogs, social networking sites or e-mails to post photographs or offensive or threatening comments about colleagues or other work contacts

#### Conviction for a Criminal Offence

Conviction for a criminal offence, whether committed in the course of official duty or not, may result in disciplinary proceedings. This will include, but not be limited to convictions, which result in a prison sentence whether custodial, suspended or deferred.

The key tests for determining whether disciplinary action is justified in the event of a conviction will depend on whether the offence has a bearing on the role, duties and responsibilities of the person concerned and the person's suitability or otherwise of continuing to work in that role. In addition, consideration will be given to whether the conviction is likely to impact adversely upon the business or reputation of the Council or seriously undermine the trust and confidence that the Council has in the employee.

Given that every offence and role is different it is difficult to give definitive guidance, but, for example:

- A lengthy driving ban arising from a driving offence has a direct bearing on a role where driving is a fundamental part of the job. In this scenario the Council may well be justified in taking disciplinary action against this individual because the conviction seriously impacts on the person's ability to fulfil the terms of their contract. However, if there is no specific requirement to drive (e.g. the person is in an office-based post) there is no impact on the person's ability to do their job and, therefore, does not become a discipline matter.
- A person is convicted of supply of drugs, outside of work, but works in a role that gives access to vulnerable people might be a scenario where the conviction would undermine the trust and confidence that the Council has in the employee and adversely impact on the reputation of the Council.
- A person convicted of a sexual offence whilst working in an office-based role might fall within the scope of the policy on the basis that the conviction would undermine the relationship of trust and confidence between the employee and the Council.

In any of the scenarios above a period of imprisonment may well be an outcome. Incarceration may frustrate the contract of employment in that an event occurs, which is not reasonably foreseeable when the contract was made and not under the direct control of either party, which renders impossible further performance of the contract. However, Incarceration is not necessarily an automatic reason for dismissal of the employee in question. Account would need to be taken of the nature of the offence and its relationship to the role, the length of the imprisonment relative to the

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length of the person's contract and length of service, whether the person can be replaced temporarily until such time as the imprisonment ends and so on. This is a complex area and professional advice should be sought on a case by case basis.

None of the lists above are exhaustive and one test that should be asked when determining if there is a potential for a misconduct allegation "Would a reasonable person be aware that disciplinary action would result from a certain act or omission?".

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#### Appendix 2

##### Guidance on Undertaking an Investigation and Preparing an Investigation Report

The role of the Investigating Officer in a Disciplinary process is to ensure that all background information pertinent to the allegations is collected and presented in line with the Council's Disciplinary Procedure.

The Internal Auditor must be involved in all investigations relating to fraud, bribery, breaches of Financial Regulations or falsification of financial records.

The appointed Investigating Officer must endeavour to complete his/her investigations in as timely a manner as possible, always being aware of the importance of confidentiality. A member of the Council (who will then not be allowed to participate as a panel member at the Disciplinary hearing or Appeal) will support and assist the Investigating Officer in the conduct and administration of their investigation.

When undertaking an Investigation, the Investigating Officer should seek to consider,

- The full allegations of breach of discipline, the circumstances surrounding these and the consequences thereof.
- Interviewing the employee against whom the allegations have been made, using the Record of Formal Investigation Interview template
- Identifying and interviewing where appropriate any further witnesses whether internal colleagues or members of the public with a view to establishing the true facts of the case; using the formal investigation interview with witnesses' template.
- Any relevant documentary evidence that may be available. Assistance should be sought from Internal Auditor where appropriate.
- Any recent changes to the employees' job which may have presented as a mitigating factor in the alleged offence.
- Any previous incidents of a similar or associated nature.
- Whether the employee has received appropriate training or counselling as may be appropriate to the alleged breach of discipline.
- Any other mitigating circumstances which may have contributed to the alleged breach, such as domestic, health or work-related issues.

Having undertaken a full investigation and having considered all the facts as determined by using the parameters above, the Investigating Officer should prepare a report to the Council outlining their findings.

In the report the investigating Officer should seek to fully outline and discuss all the information gathered as part of the Investigation and to draw conclusions based on the evidence. The Investigating Officer should then make his/her assessment of whether there is a case to answer in respect of formal disciplinary action, or whether the evidence suggests that informal sanction may present a more measured alternative.

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The report should be accompanied by notes of relevant investigatory meetings, witness statements and any other documentary evidence as appropriate which should be cross referenced in the main body of the report.

Once presented to the Council, it will determine whether it agrees with the findings of the Investigating Officer and what action will be taken as appropriate and in line with the Council's Disciplinary procedure.

#### Suggested Format for the Investigatory Report

1. **Index**
2. **Outline of the initial allegations** - including the accused details, an outline of the allegation and witness details
3. **Findings** - Including an outline of the evidence and a discussion of the significance, relevance, and reliability of the evidence. Presentation and discussion of any mitigating factors should also be included where appropriate so that the final report gives a balanced summary of the case and of all the evidence gathered.
4. **Conclusion** - including key findings, what specific Council rules, policy, regulations, or legislation the employee has breached, if any.
5. **Recommendation** - the author should conclude with a recommendation as to whether the matter should proceed to a hearing or not and whether for misconduct or gross misconduct.
6. **Appendices** - including notes of investigation meeting, witness statements, photographs (if appropriate), correspondence (e-mails, letters, records etc) and any other documentary evidence that may have been gathered as part of the investigation.

Often, during an investigation other peripheral matters may come to light which are not central to the allegations against the specific employee being investigated but nevertheless require addressing. These are most likely to be issues such as lack of robust systems or processes, poor departmental relationships, lack of training, lack of effective communication, for example.

Investigating officers should avoid getting side-tracked into investigating matters that are unrelated to the central allegations, but clearly any identified shortcomings (or indeed other potential disciplinary matters) do need to be addressed. In these circumstances it is suggested that any such issues identified in peripheral areas should be notified to the Council by separate letter outside of the main investigation report.

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**Record of formal investigation interview - with employee under investigation**

**Record of investigation held on: (Date)**

Meeting attended by:	
Investigating Officer:	
Councillor:	
Employee being interviewed:	
Employee's companion:	

**Introduction:**

You are being interviewed as part of an investigation under the Council's disciplinary policy, which may lead to informal action or possibly a disciplinary hearing taking place.

The allegations being investigated are:

Notes will be taken of this meeting. You will have an opportunity to review and comment on these notes. If the matter leads to a disciplinary hearing these notes will be used as evidence.

You should not discuss the matter under investigation with colleagues except for your representative and any individual you may wish to call as a witness if the matters lead to a disciplinary hearing.

If you wilfully withhold information which is pertinent to this case, then this may lead to a further allegation being made against you.

**Details of the interview:**

Initials of persons speaking	What was asked/said

**Signature of attendees that this is a true record of the meeting:**

Name:	Signature:
Name:	Signature:

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#### Appendix 3

##### Preparing Evidential Papers for a Disciplinary Hearing

The following is a suggested format for the Evidential Papers to be provided to all parties present at a Disciplinary Hearing in line with the Council's Disciplinary Procedure. The list is not exhaustive, nor is it anticipated that every suggested item will form part of all Disciplinary proceedings.

- **Title page** - Noting day, date, and venue of Disciplinary Hearing, along with those attending
- **Contents page** - Listing all items enclosed in the evidential bundle as provided by the investigating Officer and the employee and his/her representative as appropriate.
- **Investigatory report** - submitted by the Investigating Officer.
- **Appendices** - All associated Appendices referenced in this document, usually in chronological order:
  - All witness statements gathered as part of the investigation Process.
  - Photographic or CCTV footage evidence as appropriate:
  - Other relevant documents, depending on the nature of the investigation for example timesheets, complaint letters, logs, expense claim forms etc
  - Any additional evidence as supplied by the employee and his/her representative, again usually in chronological order (This may include witness statements, photographic evidence etc.)

Once all evidence is collected, the evidential papers should be itemised and clearly referenced on the contents page. The final papers should be bound for ease of use and distributed to all relevant parties in line with the time scales set out in the Council's Disciplinary Procedure. If any information is lost or misplaced, a master set of evidential papers will be held securely and confidentially until the conclusion of the Hearing.

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#### Appendix 4

##### Frequently Asked Questions - Paid Suspension

**Q. When is paid suspension used?**

A. Paid suspension is not considered a disciplinary sanction but a neutral act enabling a full investigation to be carried out. It is normally used where a particularly serious allegation is made, where relationships have broken down or where it would be impossible for a full investigation to be completed if the employee was still in the workplace.

Suspension must be authorised by the Council.

**Q. How should be notified of my suspension?**

A. Normally you will be notified by the Chairman of the Council.

- Verbally - if it is practical or possible for you to be informed in this way,
- By telephone - if it is not possible to meet with you in person:
- By letter - if it is not possible to meet with you or contact you by telephone.

Regardless of how you are informed of your suspension you will be issued with a suspension letter outlining the reasons for your suspension and any terms you must abide by during the period of the suspension.

**Q. Will I be paid if I have been suspended?**

A. You will normally continue to receive full pay during your suspension. However, if you are certified as unfit to attend for work, owing to ill-health or you are on maternity leave, your payments will be made in accordance with your conditions of service.

**Q. Will continuous service be affected by suspension?**

A. Suspension does not affect your employment rights. For the purposes of calculating continuous service in relation to benefits such as sickness, maternity, redundancy, pensions etc. the period of suspension counts as normal employment.

**Q. Do I have to stay at home during my normal working hours in case am called back to work?**

A. You are required to make yourself available to your employer at reasonable notice (e.g. for a meeting or interview). Normally this would mean you should be prepared to report to work on the day following the request for you to report to work.

However, you could be asked to return on the same day as the request is made, which would not be unreasonable if the request was made early in the day for an afternoon meeting and a representative was also available.

**Q. What happens if wish to make a trip away from home during the period of suspension?**

A. Annual leave arrangements still apply during suspension, therefore if you wish to make a trip away from home, which would make you unavailable to attend work as described above, you will need to seek authorisation for annual leave from your manager/the Council in the normal way.

Given that suspension is not a disciplinary penalty, annual leave which has been arranged prior to suspension will be honoured other than in exceptional circumstances, where the matter will be discussed with you.

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You will need to clear any request in advance, including confirming pre-arranged leave, with your line manager. They will need to consider the likelihood of your being required to attend work during the time requested.

**Q. Am I allowed access to my workplace and colleagues during suspension?**

A. The council does not wish to impede you in preparing your case. If you wish to visit your workplace during the suspension period you must first obtain the permission of your manager/the Council She/he/it will need to be satisfied that there are reasonable grounds for your request and that your visit will not interfere with any related investigation.

Your employer, obviously, cannot prevent you from meeting with colleagues outside normal working hours. However, if you intend discussing the matters relating to your suspension, please be aware that this may place your colleagues in a difficult position. In any event, they may choose not to discuss it with you. You should, therefore, approach them sensitively.

**Q. What assistance is there for employees on paid suspension?**

A. If you are a member of a trade union you are advised to seek advice from your trade union representative.

Your manager/the Council will keep in contact with you to both advise you of progress regarding the investigation and keep you updated with any development in connection with your job.

**Q. How long can the suspension last?**

A. There are no specified time limits. However, suspension will be for as short a period as possible.

Where a suspended employee is the subject of external investigations, police enquiries or charged with a criminal offence, the length of the suspension may be prolonged pending the outcome of police enquiries or legal proceedings.

Where the investigation is subject to a delay your manager/the Council will write to inform you of the delay and the reason for it.

**Q. How will I know when the suspension has ended?**

A. Normally, suspension ends when, following the completion of the investigation, a decision is taken.

This decision may be:

- to take no action and end the suspension.
- to proceed with formal disciplinary action
- to take some other form of action.

In any event you will be notified in writing of the decision.

Where disciplinary action is taken, the suspension will normally continue until the hearing takes place. It will be decided at the hearing when the suspension will end. You will remain suspended until informed otherwise by the Council.

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Q. **How can I return to work after being suspended?**

A. Paid suspension is not a disciplinary penalty. Employees can return to work successfully after being suspended and will receive support from both their manager and the Council.

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#### Appendix 5

##### Guidance on the conduct of a Disciplinary Hearing

The following guidance is to be used by all persons involved in the planning and/or Hearing of a disciplinary case and is designed to assist in ensuring a fair and consistent approach to the administration of all disciplinary hearings.

##### The Venue

It is imperative that the chosen venue is private and offers suitable access to all those present or may be called as witnesses during the proceedings.

##### The Hearing

Introductions - The Chairman of the Disciplinary Panel will introduce everyone present and explain the purpose of the hearing and how it will be conducted.

Presenting the evidence for the employer - The Chairman of the Disciplinary Panel will hand over to the Investigating Officer who will present the case on the part of the authority, referring to the evidential papers as necessary. The Investigating Officer may be accompanied or assisted by the Internal Auditor where the Internal Auditor has been involved in the investigation.

Employee to state own case and present evidence - The employee will have the opportunity to state his/her case and to respond to any allegations made by the Investigating Officer

Further questions/summing up Once all the evidence has been presented, the Chairman of the Disciplinary Panel will ordinarily recap on the pertinent issues as presented by each party before summarising what has been discussed. If there are any issues, which have been raised during the hearing, which require further investigation the Chairman of the Disciplinary Panel will also note these at this stage.

Adjournment - Once both parties have had the opportunity to present their case and the Chairman of the Disciplinary Panel has summed up, he/she will adjourn the hearing to determine the outcome.

Informing the employee of the decision - Once a decision has been reached, the Chairman of the Disciplinary Panel will reconvene the Hearing to confirm the decision. He/she will confirm the penalty that will be imposed, the specific reasons for this sanction, and where improvement is required, what this is.

The Chairman of the Disciplinary Panel will also confirm what the outcome will be if poor performance or bad behaviour continues and will also explain how long any sanction will remain on the employee's record.

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The employee will also be informed of his/her right to appeal against the decision in line with the Council's Disciplinary Procedure.

The outcome will be confirmed in writing to the employees as soon as is practicable and not more than five working days after the disciplinary hearing.

#### Other considerations

- If the employee is genuinely unable to attend the hearing, e.g. due to illness, then an alternative date can be offered.
- If the employee's companion is unable to attend a re-scheduled meeting, it is the responsibility of the employee to propose an alternative date. This must be no more than five working days after the proposed re-scheduled date.
- The employee must be kept up to date on a regular basis with any delays in conducting the disciplinary hearing.
- In the event that an employee becomes anxious in the run up to a disciplinary hearing, the authority will seek a medical opinion from the Council's Occupational Health Adviser/the employee's GP to ascertain whether he/she is fit to attend.

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#### Appendix 6

#### DISCIPLINARY PROCEDURE

#### Frequently Asked Questions

**Q. What is the difference between an investigatory meeting and a disciplinary hearing?**

A. Essentially, the purpose of an investigatory meeting is to establish what happened, while the purpose of a disciplinary hearing is to decide what to do about it.

**Q. Can the Council invite an employee to an investigatory interview or disciplinary hearing if they are on sick leave?**

A. Where an employee who is subject to disciplinary proceedings is absent due to a short-term illness, the most appropriate course of action is likely to be for the Council to postpone the interview/hearing until the employee is well enough to attend. If the employee is on long-term sickness absence, the Council will balance the need to avoid unreasonable delay in the process with the importance of allowing the employee to put their case before it makes a decision. The Council will take steps to determine whether or not the employee is well enough to attend a disciplinary hearing, even though they are not fit for work if necessary, the employee may be required to attend an appointment with the Councils Occupational Health provider to determine their suitability to attend the disciplinary hearing. The Council will obtain medical evidence focused on the employee's ability to take part in a disciplinary hearing and consider any medical advice.

**Q. What happens if the companion is not available at the proposed time of the meeting?**

A. If the companion is not available at the proposed hearing time and the employee suggests another time that is reasonable and falls within five working days of the original time, the hearing will, wherever possible, be postponed until the new time proposed by the employee.

**Q. Can the Council reject an employee's choice of companion for the disciplinary meeting?**

A. Under section 10 of the Employment Relations Act 1999, employees have the right to be accompanied at a disciplinary or grievance hearing if their request to be accompanied is reasonable. Therefore, the Council can reject an employee's choice of companion if it is unreasonable for him or her to request to be accompanied by that person. This may be the case, for example, if the companion is involved in the proceedings, or because he or she will not be available for a meeting for a substantial length of time.

**Q. Is an employee allowed paid time away from their job to accompany a colleague to a disciplinary or grievance meeting?**

A. Yes. An employee is permitted to take a reasonable amount of paid time off during their working hours to accompany a colleague to a disciplinary or grievance hearing. The accompanying employee should advise their manager/the Council when they are due to be absent

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**Q. Can the Council dismiss an employee on the grounds of a criminal act that happened outside of the workplace?**

A. It is permissible to dismiss an employee on the grounds of a criminal act that happened outside of the workplace if it thought likely to affect the continued employment relationship, the ability of the employee to do their job, brings the reputation of the Council into disrepute or frustrates the contract.

**Q. What can the Council do if an employee posts derogatory remarks, including comments that may be construed as bullying, or photographs on a social networking site, or circulates inappropriate photographs and comments by any other means?**

A. It is recognised that the use of social networking is widespread and an effective means of keeping in contact with friends, family and often with colleagues. When used appropriately there is no problem, but employees should be aware that whilst they may feel a need to express their thoughts and frustrations about work they should be careful to avoid statements or comments that may be defamatory to colleagues or otherwise damaging to the reputation of the Council. Any bullying, harassment, victimisation or threats towards colleagues either face to face or via social networking sites may be classed as gross misconduct and be dealt with accordingly under the scope of the disciplinary policy, Similarly any content or material that is likely to bring the Council into disrepute may also be subject to a disciplinary process.