

ROYAL BOROUGH OF WINDSOR & MAIDENHEAD

Disciplinary Policy & Procedure

1. Disciplinary Policy

1.1. General

The following rules and procedure form part of the statement of written particulars of employment which the Council is required to provide under the Employment Rights Act 1996. They have been reviewed and updated in line with the Employment Act 2008 and the ACAS Code of Practice on Disciplinary Procedures.

1.2. Scope

Except where otherwise stated, these rules and procedures apply to all employees of the Council with the exception of staff employed directly by schools operating under delegated financial management.

1.3. Statement of Disciplinary Policy

In all organisations it is necessary to establish and maintain certain standards of conduct and performance. To ensure these standards are effectively controlled, disciplinary procedures are introduced that will enable any lowering of standards, or breaches of the normal conduct expected of all employees, to be dealt with in a fair and just manner.

The requirements of these procedures shall not preclude any informal discussions concerning the conduct or performance of an employee. Indeed it is very important that adequate counselling procedures existing between Supervisors or Managers and their staff to minimise the need for any or further, formal disciplinary action.

Where an initial breach of discipline is sufficiently serious or where progressively more serious disciplinary action does not result in the required improvement, the Council may dismiss an employee.

None of the disciplinary action provided for, however, shall be taken before the employee has had the opportunity to put his/her case at a hearing where all facts can be considered and witnesses called. He/she may be accompanied by a work colleague or accredited Trade Union representative or Trade Union official if they so wish.. Anyone who is subject to formal disciplinary action will be notified of the decision made at the hearing and of the appeal rights against that decision.

2. Disciplinary Rules

2.1. This Policy and Procedure has been amended and updated following consultation with Trade Unions representing all employees of the Royal Borough of Windsor and Maidenhead who are covered by this policy.

2.2. In order that this procedure be used as little as possible, it is important that all employees conform to certain simple rules of performance and behaviour. Staff should familiarise themselves with all Council HR policies as available via the intranet or from their line manager, with particular attention to the Employee's Code of Conduct.

2.3. Performance at Work

All employees are required to:

2.3.1 Carry out their duties to the best of their capabilities to the standard required by the Council

If there is any aspect of the work that is not clearly understood guidance and, if necessary, instruction must be sought.

2.3.2 Work in a manner that is safe to themselves and to any person liable to be affected by their work.

If there are any special hazards associated with the task to be performed precautions as laid down by management, such as safe methods of work or use of protective clothing, must always be observed.

2.3.3 Take proper and appropriate care of Council resources including information provided for use by them in the performance of their duties.

2.4 Behaviour at Work.

All employees are required to conduct themselves in a courteous, considerate and non-discriminatory manner that is acceptable to management.

In other words - behave to others as you would like them to behave to you. Consideration and respect to colleagues and customers is the backbone of good behaviour.

2.5 These few rules on performance and behaviour are the framework on which the conduct of an employee may be assessed. Within the rules there may be many specific ways in which the conduct of an employee is considered to be below the standard required. If such a situation should occur and normal encouragement, or correction by management, fails to effect an improvement then the formal disciplinary procedure may be invoked.

2.6 Offences which are breaches of the Council's Disciplinary Policy can be divided into two categories:-

2.6.1 **Gross Misconduct**

This is misconduct of so serious a kind that the Council cannot tolerate the continued presence of the employee at work, as the nature of the conduct breaches the contractual relationship between the employee and the Council. If proven, dismissal can be justified for the first offence.

2.6.2 **Other Misconduct**

Cases of misconduct will not normally warrant dismissal without previous recorded warning(s). A minor offence will obviously call for a lesser punishment but repeated or aggravated minor offence(s) could lead to more severe sanctions, including ultimately dismissal.

2.6.3 It is not possible to list all the actions that might comprise "misconduct" or "gross misconduct" but Appendix A contains some examples that provide a useful guide to how certain offences will be regarded by management. Each case will, however, be fully investigated and all extenuating or mitigating circumstances and the overall effect of this breach of conduct on the Directorate or on the Council as a whole will be seriously considered in coming to a decision.

2.6.4 These rules are those which generally apply to all Council employees, but because of the nature of certain jobs and work places, there will be specific Directorate and/or Service area rules issued separately to supplement them.

2.7 Behaviour outside work

Behaviour outside work can be relevant to employment.. Certain conduct could affect an employees ability to perform their duties, where behaviour undermines the trust and confidence between employer and employee and could lead to disciplinary action..

An example of such an occurrence would be the loss of a driving licence due to an offence committed outside working hours for an individual required to drive as part of his / her job. Or any criminal charge which could lead to a conviction as a result of conduct unbecoming of a local government officer e.g. affray, theft, fraud

2.8 Other circumstances which may lead to the termination of employment

The Council's Capability, Redundancy/Early Retirement and Absence Management Policies and Procedures deal with other circumstances that may lead to the termination of employment.

3. Disciplinary Procedure

3.1. Introduction

3.1.1. The procedure will be applied consistently to all employees to minimise the potential for claims of unfair or discriminatory treatment. It may commence at different stages for some staff depending on their status e.g. probationary and temporary employees.

3.1.2. The Council's disciplinary procedure is designed to ensure that employees are given the opportunity to hear any disciplinary allegations made against them and to state their case with the assistance of witness(es) and support via a work colleague or Trade Union..

3.1.3. The procedure provides for four stages of disciplinary action to be taken

Stage I - Formal oral warning (recorded)

Stage II - First written warning

Stage III - Final written warning

Stage IV - Dismissal

According to the seriousness of the breach of discipline or further breach of discipline following previous warning(s), Stages I, II and/or III may be omitted.

3.2. Authorised Officer

Directorate management will authorise individual officers to carry out the procedure at each of the levels and to determine the type of disciplinary action to be taken.

3.3. Investigation

3.3.1 No disciplinary action will be contemplated or taken until a full investigation has been carried out by an appropriate officer, acting as the Investigating Officer, supported by an HR

Advisor.

3.3.2 The purpose of the investigation is to establish the facts surrounding the case before recollections fade and determine whether a disciplinary hearing should be held.

3.3.3 The Investigating Officer will explain the purpose of the interview and indicate that if it is determined that the matter should go further, the employee will be asked to attend a formal disciplinary hearing. A statement summarising the evidence given by the employee will be produced.

3.3.4 The investigation should be conducted as quickly as possible.

3.3.5 The investigation does not constitute disciplinary action and will be kept totally separate from the disciplinary hearing.

3.4. Suspension

3.4.1. Where there is a possibility that serious disciplinary action may be taken against an individual, i.e. at Stage III or more especially Stage IV of the procedure, an employee may be temporarily suspended from duty.

3.4.2. The authority to suspend an employee lies with the Chief Executive, Director or Head of Service. In the absence of such an individual (which would generally be outside normal office hours) supervisors have the authority to suspend an employee provided that the decision is ratified by the Director or Head of Service at the earliest opportunity. No suspension must be undertaken without prior consultation with the Head of HR.

3.4.3. The purpose of the suspension will be either to enable appropriate investigations to take place before a formal hearing is confirmed, where there are reasonable grounds for concern that evidence may be tampered with, destroyed or witnesses pressurised before the disciplinary hearing; if there is a potential risk to Council business, other employees, service users or third parties in allowing the employee to remain at work. or in the case of the alleged conduct by the employee which is so serious as to necessitate immediate suspension. This may be likely in cases where gross misconduct is alleged.

3.4.4. Suspension will only be implemented after careful consideration and will be kept under review. It does not represent disciplinary action and does not involve any prejudgement or assumption of guilt.

3.4.5. The decision to suspend will be confirmed in writing and will confirm that the suspension is precautionary and not disciplinary in nature pending the outcome of the investigation and any subsequent disciplinary proceedings.

3.4.6. The contract of employment remains in force during a period of suspension. During the period of suspension, the employee will be paid all contractual payments. If found not blameworthy, they will receive all other monies which they would have received but for the suspension.

3.5. Disciplinary Hearing

3.5.1. A hearing will only be held after a thorough investigation has taken place. A disciplinary hearing will be conducted by an appropriate Authorised Officer, advised and

assisted by an HR Advisor. The Authorised Officer cannot have undertaken the investigation.

3.5.2. Employees called to a hearing must be given details of the allegation(s) against them and be given reasonable notice of the date and time fixed for the hearing and their right to be accompanied. Notice given will not be less than 2 working days for minor offences and 5 working days for more serious offences or potential gross misconduct.

3.5.3. The employee must take all reasonable steps to attend a hearing. If the employee or their companion cannot attend the hearing on the notified date, another hearing will be arranged, so far as is reasonably practicable within 5 working days of the original date.

3.5.4. If an employee fails twice to attend a hearing, unless there are special circumstances mitigating against it, the rearranged hearing will proceed in the absence of the employee. The employee's companion can attend and present the employee's case, if necessary. The employee will be allowed to make a written submission in such a situation.

3.5.5. The Authorised Officer will provide the employee with copies of the documentary evidence to be used at the hearing by the management representative together with a list of any witnesses that will be called to give evidence at the hearing. The Council reserves the right to conceal the identity of any or all parties if there is a legitimate reason to do so, such as whether there is a risk to others if the identity is disclosed. In those circumstances the Council will consider providing a summary of information.

3.5.6. The employee will provide the Authorised Officer with copies of all documentary evidence to be produced on his/her behalf at the hearing and a list of any witnesses to be called no later than 2 working days before the hearing. Any such information produced outside this time limit will only be allowed to be presented with the permission of the Authorised Officer

3.5.7. The purpose of a disciplinary hearing is to determine whether an employee's conduct warrants disciplinary action, and if so, the appropriate penalty. The hearing will consider the facts relating to the possible breach of discipline and all the circumstances surrounding it before determining whether or not disciplinary action is appropriate. The procedure for conduct of a disciplinary hearing will be found at Appendix B.

3.5.8. Where it is thought the possibility of dismissal might arise, a representative of the Head of Legal Services must be present at the hearing to advise.

3.5.9. If the Authorised Officer considers disciplinary action is warranted, he / she will then determine the penalty to be invoked, having considered all circumstances fully.

Only a Director or, in a Director's absence, a nominated Head of Service will be authorised to dismiss an employee.

3.6. Employee Representation

3.6.1 Employees have the statutory right to be accompanied to a disciplinary hearing by a work colleague a Trade Union representative or an official employed by a Trade Union.. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany an employee. Employees are entitled to make a reasonable request to be accompanied and must supply the name of

their chosen companion to the Authorised Officer. It is the employee's responsibility to make arrangements to be accompanied and to arrange for their companion to receive copies of documents relevant to the case.

3.6.2 Under the ACAS Code the right to be accompanied relates only to disciplinary hearings. However, this entitlement is extended by the Council to include the investigatory stage of this procedure.

3.6.3 In the case of a disciplinary hearing, the companion has the right to address the hearing to put the employee's case, sum up the case and respond on behalf of the employee to any view expressed at the hearing. They can confer with the employee during the hearing. However, they may not answer questions on behalf of the employee or address the hearing if the employee does not wish them to.

3.7. **Trade Union Officials**

Under the ACAS Code of Practice no disciplinary action other than a formal oral warning will be taken against any recognised Trade Union official until, after obtaining the employee's agreement, the circumstances of the case have been discussed with the appropriate full time official of the Trade Union concerned and the Head of HR or his/her nominee. For the purpose of this paragraph such a Trade Union official will include any local officer of a Trade Union recognised by the authority for collective bargaining and consultation purposes.

3.8. **Directors**

Special procedures apply to Directors which involve Council Members. These are set out in Appendix C.

3.9. **Disciplinary Penalties**

3.9.1. Before any decision on the appropriate disciplinary penalty is taken, consideration will be given to such factors as:-

- the employee's age, position, length of service and general performance;
- the employee's disciplinary record;
- the action taken in similar cases in the past;
- any other relevant factors including mitigating circumstances;
- the reasonableness of the proposal in all the circumstances.

3.9.2. Minor breaches of discipline and misconduct may warrant first or second written warnings.

3.9.3. More serious cases may warrant a final or other written warning, disciplinary transfer, demotion or suspension on half pay or without pay, the withholding of increments or productivity or performance payments, or dismissal with notice. In special circumstances the time limits of disciplinary warnings may also be extended.

3.9.4. Where gross misconduct is proven, dismissal will result without notice. Where dismissal occurs as the next stage of action, following a Final Written Warning, it will be with notice but payment will be made in lieu of notice.

3.10. Appeal Rights

3.10.1. An employee has a right of appeal against any disciplinary action taken. This must be exercised within 5 working days of receiving confirmation of the disciplinary decision. The appeal must be made in writing and set out the grounds for the appeal. Appeals may be made on various grounds, including new evidence, undue severity or inconsistency of the penalty.

3.10.2. Appeal rights are as follows:

- Stage I – Formal oral warning
- Stage II - First written warning
- Stage III - Final written warning

Appeal is to a higher level of management not previously involved in the disciplinary decision. Where the Director has already been involved in the hearing, appeal will be to the Head of HR or another Director or his/her representative

3.10.3. An appeal hearing at Stages I to III will be held within 10 working days of receipt of notification and the employee will be given at least 5 working days' notice of the time and place of the appeal hearing.

3.10.4. The appeal may be allowed, rejected or an alternative penalty substituted. The decision will be confirmed in writing within 3 working days and there will be no further right of appeal.

3.10.5.

a) At Stage IV, Dismissal, appeal is to the Council's Appeals Panel. An appeal hearing will be held within 20 working days of the notification. The employee will be given no less than 10 working days' notice of the time and place.

b) The Clerk to the Appeals Panel will be the Head of Legal Services or his/her representative and the Adviser to the Panel will be the Head of HR or his/her representative.

3.10.6 Whilst awaiting the outcome of an appeal against dismissal, the summary dismissal date will stand. In the event that the decision to dismiss is overturned at appeal, the employee will be reinstated as at the original dismissal date. Continuous service will not be affected and all monies under the contract of employment due will be paid in line with 3.4.5.

3.10.6. The purpose of the Appeal process is to review the decision made by the Authorised Officer and determine in the light of the evidence presented at the original hearing, whether the decision was a reasonable one. Therefore the Appeal hearing will not rehear the case, unless new evidence comes to light, which in the opinion of the Appeal Chair materially changes the case.

3.10.7. The procedure for conduct of an appeal hearing is set out at Appendix D.

3.10.8. Time limits may be varied in exceptional circumstances by mutual agreement.

3.11. Disciplinary Records

3.11.1. The Authorised Officer will confirm disciplinary action taken at Stages I, II and III

of the procedure, i.e. up to and including final written warning. The letter must include full details of the misconduct, action taken, length of time any warning or sanction is valid, improvements required, appeal rights, with time limits given and an acknowledgement of receipt. Copies must always be forwarded to the HR Unit and to the employee's Trade Union or other representative where requested.

3.11.2. At Stage IV dismissal, the HR Unit in conjunction with the Director, will issue the appropriate documentation.

3.11.3. If disciplinary action is found not to be warranted on any occasion, all references will be expunged from the file of the employee concerned and be notified accordingly to him/her and the HR Unit.

3.11.4. All records will be kept in line with Council policy and the Data Protection Act.

3.12 **Time limits for disciplinary warnings**

3.12.1 Breaches of the disciplinary rules will be disregarded after the following time periods unless the disciplinary hearing has determined otherwise, as a result of special circumstances and notified the employee accordingly:-

Stage I Formal oral (recorded) - 6 months

Stage II First written - 12 months

Stage III Final written - 12 months

3.12.2 The Council reserves the right to extend periods of warnings in exceptional circumstances.

3.13 **Employee Assistance**

The Councils Employee Assistance Programme provides employees with free confidential access to a telephone counselling and advice line. The contact number is 0800 174319 and further details are available on the intranet.

Examples of actions that constitute misconduct or gross misconduct

This list is not exhaustive and gives an indication of how certain actions will be regarded by management. Examples are not listed in any significant order

<i>Misconduct</i>	<i>Gross Misconduct</i>
Minor breach of Council rules, policies or procedures including health & safety rules and obligations	Serious breach of Council rules, policies or procedures including health & safety rules and obligations
Minor or careless damage to or wastage of Council resources	Serious neglect of duties or incompetence including causing loss or damage or injury through negligence
Careless or inaccurate completion of timesheets and other official documents inc on line systems	Theft, fraud, deliberate falsification of records, accounts, claims whether or not for personal gain or any act of dishonesty
Improper behaviour towards a colleague, customer or service user	Any act or attempted act of physical violence, harassment, bullying or insulting behaviour towards a colleague, customer or service user
Unsatisfactory attendance and/or timekeeping	Serious breach of the Council's IT security policy and procedures eg misuse of data held in Council IT systems.
Unauthorised absence	Deliberately accessing internet sites containing pornographic, offensive or obscene material
	Unreasonable refusal to carry out a reasonable management request or serious insubordination
	Any act which could be subject to criminal proceedings
	Any form of unlawful discrimination
	Any act likely to bring the Council into disrepute
	Serious incapability at work brought on by alcohol or drugs
	A serious breach of trust and/or confidence

CONDUCT OF DISCIPLINARY HEARING

The hearing will be conducted by an Authorised Officer, hereinafter called the Interviewing Officer who will be accompanied by a representative of the Head of HR.

At Stage IV of the procedure where dismissal may result, the Director (or in exceptional circumstances a nominated Head of Service), will conduct the hearing and a representative of the Head of Legal Services Units will attend in an advisory capacity.

The Interviewing Officer will explain the procedure to be followed, outline the allegation(s) made and ask the employee whether he/she admits or denies the allegation(s).

- a) Management's representative will detail the allegations and will present the evidence against the employee and call any witnesses in support of their case.
- b) The employee and/or his/her representative may cross-question management's representative and any witnesses and examine any documentary evidence submitted.
- c) The employee and/or his/her representative may present their evidence and call witnesses in support of their case. See section 3.6
- d) Management's representative may cross-question the employee, his/her representative and any witnesses.
- e) The Interviewing Officer and other members of the panel may question management's representative, the employee, his/her representative and any witnesses.
- f) Witnesses will remain in attendance whilst they are questioned and will withdraw thereafter.
- g) Management's representative and the employee or his/her representative will have the opportunity to sum up their cases if they so wish.
- h) When the Interviewing Officer and other members of the panel are satisfied that all the relevant facts have been obtained, they will, in private, consider this evidence, any mitigating circumstances and any previous relevant disciplinary record before deciding what action, if any, is appropriate. An adjournment may be approved by the Interviewing Officer, if necessary, to obtain further information.
- i) In most cases the decision will be delivered on the day and verbally, although there may be occasions when this is not possible. In any event, the decision will be notified in writing within 7 days and where disciplinary action is taken, details are entered on the personal record.
- j) Where disciplinary action is taken, the employee will be informed of his/her right of appeal against the decision, as specified in Section 3 of the Disciplinary Policy and Procedures. Where found not to be blameworthy at the disciplinary hearing, all references to the matter will be deleted from the personal record.

ROYAL BOROUGH OF WINDSOR & MAIDENHEAD

Disciplinary Procedure Applicable to Chief Executive and Directors

The provisions of the Joint Negotiating Committee for Chief Officers of Local Authorities and the Joint Negotiating Committee for Chief Executives of Local Authorities, will apply to Directors and the Chief Executive respectively in disciplinary or capability cases.

The Authority's normal disciplinary procedures will apply to Heads of Service with the Director authorised to act at Stages I, II and III, although the Head of Legal Services may become involved at Stage III (as set out in Section 3).

The table below summarises the position.

Officer	Preliminary Investigation	Sub-Committee/Officer Authorised to take Disciplinary Action	Appeal Provisions	Decision to Dismiss to be confirmed by
Chief Executive	3 Members of Employment Panel nominated by Leader of Council	Employment Panel with recommendation to Cabinet	Cabinet as deciding board - by written submission	Cabinet.
Director	Chief Executive	Chief Executive (Stage I) Employment Panel (Stages II to IV)	Employment Panel	Employment Panel empowered to take action

DISCIPLINARY APPEALS PROCEDURE

The Chair of the Appeals Panel will conduct the appeal hearing and will explain the purpose of the hearing, see section 3.10, outline the procedure to be followed and the powers vested in the Appeals Panel.

- a) The employee has the right to be accompanied by his / her Trade Union representative or work colleague and may call witnesses and refer to documents relevant to the hearing.
- b) The appellant (or representative) will put the appellant's case in the presence of the authority's representative(s) and may call such witnesses as required.
- c) The authority's representative(s) will have the opportunity to ask questions of the appellant and witnesses who have been called, on the evidence given.
- d) The members of the Appeals Panel will have the opportunity to ask questions of the appellant and witnesses and call such witnesses as required.
- e) The authority's representative(s) will put the case in the presence of the appellant and representative and may call witnesses as required.
- f) The appellant or representative will have the opportunity to ask questions of the authority's representative(s) and any witnesses who have been called, on the evidence given.
- g) The members of the Appeals Panel will have the opportunity to ask questions of the authority's representative(s) and call such witnesses as required.
- h) Witnesses will remain in attendance whilst they are questioned and will withdraw thereafter.
- i) The appellant (or representative) and the authority's representative(s) will have the opportunity to sum up their cases if they so wish.
- j) The authority's representative(s) and the appellant (and representative) will then withdraw.
- k) The Appeals Panel with the officers appointed as Clerk and Adviser will deliberate in private, only recalling the authority's representative(s) and the appellant (and representative) to clear points of uncertainty on evidence already given. If recall is necessary, both parties will return notwithstanding only one is concerned with the point giving rise to doubt.
- l) In most cases the decision will be delivered on the day and verbally, although there may be occasions when this is not possible. In any event, the Panel's decision will be notified in writing within 7 days.