

7.1 DISCIPLINARY POLICY, PROCEDURES AND STANDARDS

7.1.1 POLICY

- i. The Council's vision is to make Stroud District a better and safer place to live, work and visit for everyone. A fair, consistent and coordinated approach to the handling of disciplinary incidents, backed up by good management practices will help to improve service delivery to the public and ensure our values and goals are promoted.
- ii. The Council's emphasis will be on creating a positive environment of mutual respect and trust where employees have clear guidelines and are involved in agreeing standards of conduct and performance management systems are integrated into everyone's work.
- iii. This policy, procedure and rules are designed to help and encourage improvement among employees whose conduct or standard of work is unsatisfactory. It applies to all employees (including those on probation) and forms part of the contract of employment. Similar standards are expected from agency workers, self-employed people and contractors.
- iv. In the case of misconduct involving the Chief Executive, Strategic Directors, Monitoring Officer and Section 151 Officer, the general provisions of the National Conditions of Service for Chief Officers of Local Authorities apply and will be read in conjunction with this policy.

7.1.2 STANDARDS

The following standards apply to the application of the procedure:

- i. Disciplinary action will only be taken by a Designated Manager and only when the case has been fully investigated, the employee has been advised in writing of the nature of the complaint and of the arrangements for the disciplinary hearing, and the employee has had the opportunity to state the case at a disciplinary hearing.
- ii. The employee will have the right to be accompanied by a work colleague, full time or lay trade union official during the suspension interview (where reasonably possible), investigatory interview, disciplinary hearing and appeal hearing.
- iii. The employee will have the right to appeal to a manager designated to hear appeals (which will be a higher level of management) against any disciplinary action taken.

- iv. Although the disciplinary standards apply to trade union representatives, no formal disciplinary action will be taken against a recognised trade union representative until the circumstances of the case have been discussed with a senior trade union representative or a full time official of the union concerned. In the case of suspension and investigation, the trade union will be informed at the same time as the employee, if the employee agrees for this to be the case.
- v. Disciplinary issues will be dealt with as quickly as possible but have built in flexibility so that extended deadlines can be agreed to allow for instance, a further investigation or to accommodate the lack of availability of witnesses.
- vi. Minor issues or breaches of conduct will be dealt with informally by the line manager and may be recorded in writing to the employee and a note made on the employee's file for a specified period of time. It is only where the matter is more serious or is repeated that this procedure will be used.
- vii. All suspensions and dismissals will be reported to the Chief Executive.
- viii. A member of the Human Resource Unit will attend all formal hearings to advise on the process and ensure a record is kept of the meeting.
- ix. The Designated Manager will ensure that there is a debriefing meeting after any formal hearing, with those who have been involved, so that the learning from the process can be shared throughout the Council.
- x. In certain circumstances the Council may call upon external facilitators to act as conciliators, mediators or arbitrators where this is agreed by both parties and is aimed at bringing about a mutually acceptable conclusion.
- xi. All Designated Managers will be trained and assessed as competent before undertaking any role within this procedure

7.1.3 LINKS WITH EMPLOYMENT LEGISLATION

This policy complies and takes account of the following legislation and codes of practice; Employment Rights Act 1996 (ERA); The Employment Relations Act 1999; The Employment Rights (Dispute resolution) Act; The Data Protection Act 1998; The Employment Act 2002; ACAS Code of Practice on Disciplinary and Grievance Procedures 2004;

7.1.4 LINKS TO OTHER POLICIES

This policy needs to be considered in conjunction with the Council's capability policy (including ill health); equal opportunities in employment policy; promoting acceptable behaviour (dealing with bullying and harassment policy); confidentiality reporting code ("whistleblowing")

policy); code of conduct for local government officers; customer care policy; corporate complaints procedure; electronic communication and internet policy; redundancy procedure; and Drug and Alcohol Policy.

The following issues need to be highlighted:

- i. In poor performance cases, where the reason is not within the control of the employee e.g. health, training or the changing nature of the job, the capability procedure will be used in place of this procedure. However, poor performance resulting from, for example, negligence, lack of application or attitudinal problems will be dealt with under the disciplinary procedure. Further, where an employee's absence record has been investigated and the absences are deemed to be of a casual nature, the employee will be dealt with under this procedure.
- ii. This procedure does not apply in the case of termination of temporary employment where the reason for termination is that the need for the employee's service has expired or is about to expire or termination of employment by reason of redundancy or where the reason given for dismissal falls within the definition of some other substantial reason e.g. business reorganisation or economic necessity or resignation by the employee or other termination by mutual consent.
- iii. This procedure will comply with the equal opportunities in employment policy and not discriminate on the grounds of sex, marital status, age, race, nationality, disability, sexuality, religious belief, ethnicity or other grounds covered by statute.
- iv. The grievance procedure will not be used for appeals against disciplinary decisions, as that is the purpose of the disciplinary appeals procedure. If, however, the employee has a complaint against the behaviour of a manager during the course of a disciplinary case, they may raise it as a lack of fairness issue. If necessary, the disciplinary procedure may be suspended for a short period until the concerns can be considered. Alternatively, another manager may be brought in to deal with the disciplinary case.
- v. If, during the operation of either the capability procedure or the disciplinary procedure, the Designated Officer realises that the wrong procedure is being used, they may notify all concerned and revert to the other procedure.

7.1.5 STANDARDS OF BEHAVIOUR AND CONDUCT

- i. Disciplinary rules set out the standards of behaviour and conduct expected in the workplace. The Council's rules are not contained in one document and do not cover all the circumstances that may arise. The sources include:
 - *Council policies and procedures e.g. Health and Safety*
 - *Code of conduct for local government officers*
 - *Electronic communication and internet policy*
 - *Information on performance standards*

- *Working hours and holidays policies*
- ii. It is intended that rules will be clear and unambiguous, relevant, consistently applied, accessible, and up to date.

7.1.6 MISCONDUCT

General standards of conduct are implied in the employment contract and are therefore conditions of employment. Misconduct can very often be dealt with informally in the first instance. Examples of misconduct, where the severity of the case will be judged on the particular circumstances, include:

- *Short periods of unauthorised absence*
- *Poor timekeeping*
- *Minor insubordination*
- *Breaches of confidentiality or inappropriate disclosure of information*
- *Secondary employment that impairs performance for the Council or is detrimental to the Council's interests*
- *Misuse or damage to council property*
- *Being an accessory to a disciplinary offence*
- *Failure to follow reasonable instructions*
- *Deliberate failure to meet personal targets or deadlines*
- *Bringing the Council into disrepute*

7.1.7 GROSS MISCONDUCT

Gross misconduct is action that damages beyond repair the employer's trust and confidence in an employee's ability to fulfil the terms of their contract of employment or to tolerate their continued presence in the workplace. Examples of behaviour at work that may be regarded as gross misconduct (and if judged as such within this procedure will lead to summary dismissal) include:

- dishonesty, theft, fraud, bribery, corruption or misuse of Council property
- significant periods of unauthorised absence
- unauthorised entry to computer records or deliberate falsification of records including time sheets, flexicards, expense claims and sickness declaration forms
- a serious breach of the organisation's rules on e-mail and internet usage including deliberate access to pornographic or paedophile sites
- violence to other members of staff or members of the public
- deliberate or reckless damage to the Council's property

- an inability to perform job duties through being under the influence of alcohol (see also Capability Policy and Drug and Alcohol Policy)
- being in the possession of, or under the influence of illegal drugs (see also Capability Policy and Drug and Alcohol Policy)
- sleeping on duty (see also capability policy)
- a serious breach of the Council's safety rules or a single error due to negligence which causes or could have caused significant loss, damage or injury to the Council, its employees or members of the public
- conviction of a criminal offence that makes the employee unsuitable or unable to carry out his or her duties or which impacts substantially on the trust and confidence the Council expects to be able to have in its employees
- a serious act of insubordination, such as deliberate refusal to carry out reasonable, appropriate and formal instructions
- acts of bullying, harassment or discrimination against a work colleague or member of the public
- obscene or indecent behaviour or sexual misconduct
- a serious breach of security or of financial confidentiality
- breach of the Council's Financial Regulations or Standing Orders

This list is not intended to be an exhaustive one and only gives an indication of the types of offence that may be considered gross misconduct. In certain circumstances serious misconduct affecting the employment relationship that has taken place outside of work may also be regarded as gross misconduct.

7.1.8 MANAGERS DESIGNATED TO TAKE ACTION

- i. Certain Designated Managers have delegated powers to take disciplinary action on behalf of the Council as an employer as follows:

Type of disciplinary action	MANAGERS DESIGNATED TO TAKE ACTION			
	Manager designated to take action in case of Strategic Directors, Monitoring Officer Chief Financial Officer Strategic Head	Manager designated to take action in case of Heads of Service	Manager designated to take action in case of Unit Managers	Manager designated to take action in case of all other employees
Written	Chief Executive	Strategic Director	Head of Service	Head of Service

warning			/ Strategic Head		
Final Written Warning	Chief Executive		Strategic Director / Strategic Head	Head of Service	Head of Service
Dismissal or action short of dismissal	Chief Executive		Strategic Director / Strategic Head	Head of Service	Head of Service
Appeal against disciplinary action	Panel of 3 members		Chief Executive	Strategic Director / Strategic Head	Strategic Director / Strategic Head
Appeal Against dismissal	Panel of 3 Members		Chief Executive and 2 Members	Chief Executive and 2 Members	Chief Executive and 2 Members

- ii. The Designated Manager is responsible for informing and seeking advice from the Human Resource Unit, suspension, managing the investigation (including who will conduct it, the focus and timescales) and conducting the disciplinary hearing. In the case of an employee who already has a final warning for misconduct issues and is facing dismissal the Designated Manager, if involved in the case up to this point, will need to question their independence and may consider it necessary to appoint an alternative Designated Manager.

7.1.9 STAGES IN THE PROCEDURE

Please also refer to guidelines explaining how to carry out each stage of this process.

7.1.9.1 CONSIDERING SUSPENSION

- i. The Council may suspend an employee on full pay while the allegation is being investigated. Suspension in itself is not a disciplinary action and can be seen as protection for both parties. The circumstances in which suspension will be considered include: an objective investigation cannot be completed by the employee remaining at work; or the allegation is suspected gross misconduct and the outcome may be dismissal or recommendation to dismiss; **or** the employee is the subject of investigation by the police and the alleged offence is considered relevant to the duties of the individual as an employee or to impact upon the trust and confidence the Council would expect to have in the employee; **or** where it is prejudicial to the Council's interests for the employee to remain at work.
- ii. A decision to suspend an employee will only be taken by a Designated Manager in consultation with the Human Resource Unit. The employee will normally be interviewed by this Manager to decide if suspension is reasonable and necessary and to confirm the reasons for suspension. The decision will be followed up in writing. Any period of suspension will be kept to a minimum and the employee will remain on full pay.

- iii. While suspended, all employees will be offered a named contact person who may be another Designated Manager or a Human Resource Officer. This person will offer regular support and act as the link person arranging contact with employee witnesses and/or for a work colleague to accompany the employee if requested.
- iv. During any period of suspension the employee shall not attend the workplace other than for the purpose of attending an investigatory interview or disciplinary hearing and shall not discuss this matter with another employee, suppliers or customers of the organisation, excluding their employee or trade union representative
- v. In exceptional circumstances a line manager may instruct an employee to leave the place of work immediately if in the manager's opinion the employee's continued presence would be detrimental to the Council's interest **and** a manager designated to suspend is not available. This action needs to be reported as soon as possible to the Designated Manager so that a formal decision can be made.

7.1.9.2 THE INVESTIGATION

- i. A full investigation of any disciplinary allegation(s) will be carried out before a disciplinary hearing is convened. The Designated Manager will decide the most appropriate person(s) to conduct the investigation ensuring that they are unbiased, not involved in the incident, have the necessary skills and understand the disciplinary procedure. This may include the possibility of using an external investigator. An investigation will not be completed internally by any officer below unit manager level.
- ii. Where the investigation requires an interview with the employee concerned to establish facts, it will be made clear that this interview is not a disciplinary hearing.
- iii. As part of the investigation, interviews may be conducted with third parties such as witnesses, colleagues and managers. It may also mean analysing written records and information, monitoring telephone records and information held on personal computers subject to legal authority and a search of the employee's person and/or property. Where requested, every effort will be made to keep the identity of witnesses confidential. However, there may be circumstances where this cannot be guaranteed and this will be made clear to all witnesses.
- iv. The investigator will produce a written report for the Designated Manager, identifying their findings and recommending what if any disciplinary issues need to be considered and including the witness statements where appropriate. All information collected will be recorded and shared in accordance with the Data Protection Act 1998.

7.1.9.3 THE DISCIPLINARY HEARING

- i. If following an investigation, the Designated Manager decides that a disciplinary hearing is necessary the employee will be informed in writing of the time, date, location and type of hearing, the nature of the allegations and their right to be accompanied. The employee will be given at least 5 working days notice of the hearing.
- ii. During the hearing, the employee will be given the opportunity to explain their case and present evidence, to question any witnesses and to call any witnesses of their choice providing these have been notified to the Designated Manager in advance.
- iii. In reaching decisions on appropriate disciplinary action, Designated Managers will take into account any mitigating circumstances.
- iv. Where the employee and/or their representative cannot make the 1st hearing date and this is notified in advance to the Designated Manager, the meeting will be rescheduled. If the 2nd date cannot be met a 3rd date will be offered but at the same time it will be stressed that the meeting will go ahead irrespective of their attendance. However, every reasonable attempt will have been made to get a mutually acceptable date. The employee will also be offered the chance to make written submissions or suggest alternative arrangements for holding the hearing at each stage. If an employee is unable to attend a disciplinary hearing due to sickness absence, account will be taken of the nature of their illness and if necessary a medical opinion sought in deciding whether to postpone the hearing or to proceed in their absence.

7.1.9.4 DECIDING ON DISCIPLINARY ACTION TO BE TAKEN

- i. After a disciplinary hearing the Designated Manager may take one of the following courses of action (if action is decided necessary):

Disciplinary Stages	Type of offence	Time limit before disregarded
Written warning	A further offence after an informal discussion or a first serious incident of misconduct	9 months
Final written warning	A failure to improve conduct after a written warning or very serious misconduct or gross misconduct where dismissal is not considered appropriate	24 months
Dismissal or action short of dismissal	A failure to improve conduct after a final written warning or gross misconduct	

- ii. In taking action the Designated Manager will specify the time limits before the action is disregarded, as shown above. In exceptional circumstances and for clear reasons, these limits may be varied.
- iii. In cases where dismissal is an option, alternatives short of dismissal will be considered, e.g. transfer to other departments and/or duties, demotion or other sanctions.
- iv. If dismissed for gross misconduct the dismissal will be without notice or pay in lieu of notice. If dismissal is for failure to improve after a final warning, notice will be given according to the terms of the contract of employment.
- v. This procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

7.1.10 ACTION FOLLOWING A DISCIPLINARY HEARING

- i. In all cases where disciplinary action is taken, the employee will have the decision confirmed in writing within 5 working days. The letter will state the level of disciplinary action taken, the reasons for the decision, the action required of the employee, the consequences of any recurrence of misconduct, the right of appeal and the time limits. All letters will be written by the Human Resource Unit.
- ii. Records of disciplinary action taken will be kept on the employees personal file by the Human Resource Unit and be strictly confidential. This will include relevant evidence where appropriate and notes of the disciplinary meeting and appeals hearing
- iii. Disciplinary warnings that have exceeded the time limits will not be removed from personal files but they will be disregarded for the purposes of any disciplinary action taken after this date.

7.1.11 APPEAL AGAINST DISCIPLINARY ACTION

- i. If the employee wishes to appeal against a disciplinary decision, this must be notified by them in writing within 5 working days of the receipt of written notification of the disciplinary decision. This appeal will be to a manager designated to hear appeals and must state the ground(s) on which the disciplinary decision is being challenged.
- ii. The Designated Manager will be responsible for ensuring the production of any additional information needed for the appeal and notifying and involving the Human Resource Unit. The employee will be given at least 5 working days' notice in writing of the appeal date.

- iii. An appeal hearing is not intended to repeat the detailed investigation that led to or formed part of the disciplinary hearing, but to focus on specific factors that the employee feels have received insufficient consideration or which they wish to challenge. These might include an inconsistent / inappropriate penalty, extenuating circumstances, bias of the Designated Manager, unfairness of the hearing or new evidence subsequently coming to light.
- iv. The Designated Manager has the authority to quash or reduce a disciplinary penalty or, in exceptional and appropriate circumstances, to increase it, in accordance with the actions specified in the Council's procedure.
- v. The outcome of the appeal hearing will be confirmed in writing within 5 working days of the meeting stating the decision made with reasons
- vi. Where an appeal against dismissal fails, the effective date of termination will be the date on which the employee was originally dismissed. The decision of the Designated Manager will be final within the procedures of the Council.