

DISCIPLINARY POLICY

AUTHOR	Human Resources and Organisational Development
SCOPE	<p>This policy applies to:</p> <ul style="list-style-type: none"> • employees of Manchester City Council • employees deployed to the Manchester Local Care Organisation (MLCO) • employees on secondment outside of the council but who remain on Manchester City Council terms <p>This policy does not apply to:</p> <ul style="list-style-type: none"> • employees in their probationary period • agency workers, consultants, self-employed or casual workers • school employees • Head of Paid Service, Monitoring Officer, Chief Finance (s.151) because a separate Disciplinary Procedure applies • health related absences • concerns about capability • dismissal in a redundancy situation
PURPOSE	<p>The purpose of this policy is to:</p> <ul style="list-style-type: none"> • provide direction and support to colleagues with poor conduct • explain when disciplinary action may be appropriate • set out a fair and consistent approach to the management of misconduct
APPROVAL	N/A - document in consultation only
REVIEW	The policy will usually be reviewed every 3 years, but may be reviewed sooner if there are changes to legislation or statute; agreement of new national terms and conditions of service or Government Policy; organisational change; or resulting from changes agreed through Trade Union Consultation.

Contents

1. POLICY AIMS	3
2. EQUALITY	3
3. ROLES AND RESPONSIBILITIES	4
4. EXPECTATIONS OF CONDUCT	5
5. REPRESENTATION	7
6. INFORMAL RESOLUTION	7
7. DISCIPLINARY PROCESS	7
Step 1 – Preliminary Investigation:	8
Step 2 – Investigation:	8
Suspension:	8
Step 3 – Hearing	9
Arranging the Hearing	9
Rescheduling the Hearing	10
Conducting the Hearing	10
Confirming the Decision	10
Sanctions	11
Alternatives to Dismissal	11
8. APPEAL PROCESS	12
Lodging an Appeal	12
The Appeal Hearing	12
Outcome of the Appeal	12
9. RECORD KEEPING	13

1. POLICY AIMS

The Council is committed to providing a working environment where all employees are treated fairly and with dignity and respect. The aim of this policy is to ensure that there are fair and objective arrangements in place to deal with concerns about conduct and to encourage improvement where conduct is believed to have fallen below acceptable standards, either informally or through the formal stages of the process.

Employees should be aware that some conduct outside of work can be subject to disciplinary action if a connection to their employment by the Council can be made.

This policy is designed to:

- Support colleagues in meeting the Council's standards of conduct;
- Provide a framework for establishing whether misconduct has occurred; and
- Support managers in managing misconduct issues.

This Disciplinary Policy and Guidance must be followed when a potential misconduct issue has been identified and has not been resolved through normal day to day supervision arrangements, or where more serious allegations arise. No disciplinary outcome will be decided until the appropriate steps outlined in this policy have been followed and the facts have been established.

This policy relates to conduct and behaviour only. Concerns about performance should be managed through the Capability Policy.

2. EQUALITY

Manchester City Council is committed to becoming a fair and inclusive employer with a workforce that is representative of the communities we serve.

The Council takes a zero tolerance approach to discrimination of any kind and is committed to appropriately training and supporting investigating and hearing officers. Disciplinary cases will be regularly monitored to understand the equality impact and to make sure all are being dealt with in a consistent way.

The Council will offer reasonable adjustments during the disciplinary process to support disabled employees.

3. ROLES AND RESPONSIBILITIES

All employees are required to comply with the Employee Code of Conduct and the council's policies and procedures, as well as any arrangements that apply in their service or department.

Employee Responsibilities:

- Fully cooperate with the disciplinary process
- Maintain confidentiality (employees can share information with their representative and emotional support)
- Attend meetings at the notified time and place
- Give as much notice as possible when they or their representative cannot attend formal meetings and be reasonable when suggesting alternative dates
- Follow the terms of any suspension

Manager's Responsibilities:

- Tell the employee when they have any concerns about unsatisfactory conduct and behaviour
- Act reasonably in applying the policy
- Maintain confidentiality
- Try to resolve minor issues informally with the employee through informal discussion and advice
- In all other cases, establish the facts quickly and decide whether formal investigation is required
- Consult the Employee Relations Team before proceeding to formal stages of the Policy
- Consult the Employee Relations Team before any suspension.

Representative responsibilities:

- Maintain confidentiality
- Present at meetings on behalf of an employee (with the employee's express permission), including putting forward their case, summing up and conferring during the meeting. This does not include answering questions on behalf of an employee.
- Should not prevent the Investigating Officer or Hearing Officer from fulfilling their duties.
- Make themselves available to attend meetings and be reasonable when suggesting alternative meeting dates.

Human Resources responsibilities:

- Provide advice on the reasonable application of the disciplinary policy and circumstances where informal resolution may be appropriate
- Advise on the fair and consistent application of the disciplinary policy
- Support Investigating Officers to scope and deliver a reasonable and timely investigation
- Provide support at meetings and interviews where necessary (HR Officers may ask questions at the investigating officers discretion)
- Provide procedural support to hearing officers to ensure the fair application of the disciplinary policy and consistent and reasonable outcomes

Investigating Officer responsibilities:

- Attend Investigating Officer training
- Ensure that there are no surprises by clearly explaining allegations being investigated to the employee and make sure that they are kept updated where these allegations change during the investigation.
- Undertake a thorough but timely investigation
- Offer reasonable adjustments to the process to support disabled employees
- Produce a hearing pack including an investigation report and all evidence collected.

Hearing Officer responsibilities:

- Attend Hearing Officer training
- Take ownership of the management of the hearing and note taking
- Inform the employee of the outcome of the hearing either on the day or explain when they will be able to reach a decision.
- Confirm their decision in writing to the employee and (where represented) to their representative

4. EXPECTATIONS OF CONDUCT

The [Employee Code of Conduct](#) sets out the professional and reasonable standards of behaviour expected of all Council employees.

Some occupations have additional rules and professional standards of conduct set by external regulatory bodies which are also expected standards of behaviour. Where employees do not

meet and maintain these standards of behaviour disciplinary action may be taken, up to and including dismissal.

The Council has a statutory duty to notify some external registration bodies and professional bodies when misconduct has taken place or when disciplinary action has been taken. These external bodies include:

- The Police
- DBS (Disclosure and Barring Service)
- Social Work England
- Other regulatory bodies.

If you think you need to contact a regulatory body about disciplinary action that's been taken, you should contact the Casework Team.

What is Misconduct?

Misconduct is behaviour that is considered unacceptable at work. It can also include unacceptable behaviours outside work if it impacts on your contract of employment.

What is Gross misconduct?

Gross misconduct is behaviour and/or conduct that is so serious that your employment with the Council will normally be brought to an end without notice or pay in lieu of notice (summary dismissal). Gross misconduct can also occur outside the workplace.

The Council has a zero tolerance approach to discrimination of any kind so discriminatory conduct will usually be considered to be gross misconduct.

There is more information about misconduct and gross misconduct in the [Policy Guidance \[LINK TO BE INSERTED\]](#), including examples of each.

Normal disciplinary standards apply to trade union officials in relation to their conduct as employees. If allegations are raised which are likely to result in disciplinary action under the disciplinary policy this should be discussed with a senior trade union representative or a full-time trade union official before any action is taken.

5. REPRESENTATION

Employees can be accompanied to formal meetings by a Trade Union Representative, a workplace colleague, or friend; they cannot be accompanied to internal proceedings by a solicitor or legal professional.

In exceptional circumstances the Council can reject an employee's choice of friend or relative.

6. INFORMAL RESOLUTION

Managers should always consider whether it is possible to resolve minor conduct issues informally. Often a confidential conversation between the employee and the line manager is all that's necessary to resolve an issue. On other occasions, it may be appropriate to hold a series of conversations, which could form part of regular one-to-one meetings, to ensure the necessary support and review is in place. The purpose of these discussions is to make sure that the employee understands the nature of the concerns, has the opportunity to respond and, where appropriate, the manager can explain the improvement expected of them. Managers may also write to an employee explaining the conduct that needs to change, which is called a management instruction.

As informal resolution is not formal disciplinary action, employees do not have the right to be accompanied by a work colleague or trade union representative although requests would be considered in some circumstances where it is agreed that their attendance would be beneficial to informal resolution. Further information on achieving informal resolution can be found in the [Policy Guidance](#).

7. DISCIPLINARY PROCESS

There are three stages to the disciplinary process:

1. Preliminary Investigation
2. Investigation
3. Hearing

Step 1 – Preliminary Investigation:

Managers should not presume that formal action is required so an initial investigation should take place to establish if there are grounds to pursue a disciplinary investigation. This part of the process might include a meeting with the employee and/or witnesses to gather relevant information before a decision is made about formal investigation. Representation may be necessary at this informal stage if the manager intends to question the employee. The manager should consider all the known circumstances including any mitigating factors.

If the manager thinks that formal investigation is needed then they should speak to the Casework Team for advice.

Step 2 – Investigation:

An Investigating Officer with a relevant skill set will be chosen to formally investigate the allegations. Their role is to establish the facts of the case, so will write to the employee explaining the allegations and invite them to an interview. Employees are entitled to bring a work colleague or trade union representative with them. The investigating officer may also invite relevant witnesses to interview, and they also have the right to be represented. The Investigating Officer is responsible for making sure that there are notes of the meeting, but they do not need to be a verbatim record. The investigating officer will usually collate other sources of information if they are relevant to the case. Where allegations change over the course of the investigation the investigating officer should make sure that they tell the employee.

The investigating officer should review the information they have gathered to make a decision about whether there is a case to answer and contact the Casework Team for advice if they believe a disciplinary hearing should be arranged.

The investigating officer should create an Evidence Pack which should include a report summarising their findings, and appendices which will usually include signed or electronically signed copies of interview notes and other information that is relevant to the case.

Suspension:

Suspension is on full pay and is a last resort and should only be used in the most serious of cases after taking advice from the Casework Team. Suspension is not a disciplinary penalty in

itself and is not an indicator of guilt. Depending upon the nature of the allegations it will often be more appropriate to identify alternative duties for the employee.

All suspensions, or decisions to move to alternative duties should be notified to the relevant Strategic Director, and will be reviewed by the Strategic Director or nominated deputy every 30 days to ensure that this is still appropriate and to ensure that investigations do not drift. This will be facilitated by the HR Casework Team.

Employees should be notified of the allegations prior to a suspension meeting. Trade Union representation is not essential for a suspension meeting to take place. Following the meeting the employee should receive a letter explaining the reasons for their suspension and the terms of the suspension.

Suspended employee's point of contact will usually be their line manager and will agree a schedule of contact so that they know when they can expect to be contacted and do not feel forgotten about. Their manager will also advise them on progress of the investigation and advise on requests to contact colleagues as part of case preparation. In some cases the employee may request that a named person who is not involved in the investigation is a point of contact for emotional support.

Suspended employees are able to book and take leave during suspension, but should check with their line manager that this does not clash with planned investigation meetings or formal hearing.

Suspended employees should not attempt to influence any colleagues involved in the disciplinary proceedings so should avoid contact during suspension unless agreed by their manager. The exception being their trade union representative.

Step 3 – Hearing

Arranging the Hearing

The Investigating Officer will write to the employee inviting them to a hearing. The letter will explain when and where the hearing will take place, and explain the allegations being made against them. The Evidence Pack will be sent to the employee (and their representative) 10 working days before the hearing date.

The employee and or representative should send any information they want to refer to at the hearing (which is not already included in the evidence pack) to the Investigating Officer at least 3 working days before the date of the hearing.

A manager with suitable training and experience will be identified to hear the case, and will be supported by a member of the Casework team.

Rescheduling the Hearing

It is in everyone's interest to avoid delays so once the date is set for the hearing (having sought to agree dates with any relevant trade union representatives) this should not change, except in exceptional circumstances.

Where a hearing needs to be rescheduled it should be within 5 working days of the original hearing in line with ACAS guidance. If the employee is persistently unable or unwilling to attend without reasonable excuse the Hearing Officer may progress in the employee's absence and make a decision on the evidence available.

If an employee decides not to attend they can either submit written statements or nominate a representative to attend on their behalf. Hearings may be conducted virtually where appropriate.

Where the employee is unable to attend due to certified sickness the Council's Occupational Health provider may be contacted to establish if the employee is fit to attend a hearing, or if any arrangements can be made that would make that possible (including virtual meetings). If an employee does not reasonably engage with the Occupational Health provider the Hearing Officer may decide to proceed in their absence.

Conducting the Hearing

The Hearing Officer is responsible for the fair management of the hearing so that a proportionate decision can be reached. This may include asking questions of any party at any time during the hearing. The Hearing Officer can also agree to HR Officers in attendance asking questions for clarification.

The Hearing Officer may also adjourn the proceedings at any stage where necessary. If the adjournment is for the purpose of enabling further information to be obtained, the Hearing Officer will specify the scope of the information to be obtained. The Hearing Officer will ensure that all such information is shared with both parties with reasonable time to review.

The Hearing Officer is responsible for making management notes of the pertinent points of the meeting although these do not need to be verbatim. Sometimes by agreement between all parties, a note taker may support the Hearing Officer. The employee and their representative are free to take their own notes at any point.

Confirming the Decision

The Hearing Officer will usually make a decision on the same day and invite the employee and, where represented, their representative back into the hearing for a verbal outcome. Where the Hearing Officer cannot make a decision on the day they will tell the employee when they will be

able to reach a decision. If the employee does not wish to return to hear the verbal outcome, or is unavailable then the decision will be communicated in writing. All decisions will be communicated in writing within 3 working days of the verbal outcome. The decision letter will detail the allegations, employee response, mitigation given, the outcome, clearly explain the reason for the decision, and explain the right of appeal. Both the employee and their representative will receive a copy.

Sanctions

The penalties for misconduct will normally follow incrementally, i.e. Stage 1; Stage 2; Stage 3. However, there may be some circumstances that require a higher stage of disciplinary action that will not follow the incremental stages.

The following formal sanctions may be applied:

Stage	Sanction	Live period for sanction
One	Verbal Warning	6 months
Two	Written Warning	6 months
Three	Final Written Warning	6 months
Dismissal	Dismissal – with or without notice	N/A

A Hearing Officer may decide that no sanction is required, or that instead of a formal sanction a management instruction describing expected future standards of behaviour is more appropriate.

Alternatives to Dismissal

When an allegation is found proven and results in a decision to dismiss, the Hearing Officer must consider whether there is an alternative which is short of dismissal, such as demotion or reassignment to a different post.

Where demotion or reassignment is appropriate this decision will be accompanied by a final warning. If no alternative post can be found, or the employee rejects the offer of an alternative the employee will be dismissed.

8. APPEAL PROCESS

Lodging an Appeal

Employees have a right of appeal against any disciplinary sanction to the Head of Service / Strategic Director (or their nominated representative). All appeals (including those against dismissal) must be made, in writing, stating the reason for the appeal, within 10 working days of the outcome letter being received.

Grounds for appeal can be:

1. The sanctions applied were too harsh
2. New evidence to be considered at appeal
3. Points of contention or dispute regarding the original findings.

The Appeal Hearing

The Appeal Hearing Officer will be of the appropriate seniority and impartiality.

All appeals will be based on the written grounds for appeal stated. The Appeal Hearing Officer will be provided with a hearing pack which includes the original hearing bundle, the investigating officer's report and the original hearing outcome letter. They will then consider the grounds for appeal as set out in writing.

The employee may request a paper review of their case if they do not wish for the appeal to be considered in a hearing.

In cases of dismissal (summary or with notice) there is a further right of appeal to a panel of Elected Members called the Employee Appeals Committee. This appeal is based on the grounds raised by the employee. Further information about the Employee Appeals Committee process is in the Policy Guidance, and the pro-formas which are required to request an Employee Appeals Committee are available on the Intranet.

All appeals invitations will be notified in writing.

Outcome of the Appeal

The Appeal Officer or Employee Appeals Committee can make the following decisions:

- allow the appeal and revoke the disciplinary sanction or substitute other formal or informal action instead;
- allow the appeal in part and substitute a lesser disciplinary sanction;
- disallow the appeal and uphold the original disciplinary sanction;

The Appeal Officer will ensure that adequate notes are taken of the appeal hearing, although they do not need to be verbatim. The employee and their representative are free to take their own notes at any point.

All decisions will be confirmed in writing by the Appeal Officer or Chair of the Employees Appeals Committee, usually within 3 working days of the end of the appeal hearing or at a later date by agreement. The letter will set out the main points made by the employee, the outcome and reasons for arriving at this decision.

9. RECORD KEEPING

Clear records should be taken throughout a disciplinary process. This will include all correspondence sent at all stages of the process which make it clear what action is being taken and the reasons why.

Some records presented as part of a disciplinary process will need to be redacted by the Investigating Officer. Personal information of service users should be redacted. In exceptional circumstances (e.g. whistleblowing) it may be necessary to use anonymous witness data.

In all cases the detailed outcome letter, letters and correspondence and relevant case records will be kept confidentially and retained in accordance with GDPR (General Data Protection Regulation) requirements and the Council's published retention strategy. A record of outcomes will be added to SAP which will include the expiry date of sanctions.

The Council does not allow audio or visual recording of meetings without express permission sought in advance of the meeting. This would usually be agreed as a reasonable adjustment to support a disabled employee. Any attempt to covertly record a meeting may be treated as a disciplinary matter.