

Disciplinary Policy

Policy Purpose

The Disciplinary Policy is intended to help and encourage you to maintain, and improve, if necessary, the required level of conduct.

A certain level of behaviour and conduct is expected from all employees but there may be situations where you do not behave in the expected way.

This policy is designed to ensure that you are treated fairly and consistently where conduct may fail to meet the standards required. It provides a clear procedure on the steps the Council will take to address such issues and where appropriate, provides an opportunity for you to improve standards moving forward.

The Council expects that your Manager will always attempt to resolve potential disciplinary matters informally with you, where appropriate, in the first instance. An investigation will be carried out before a decision is made on what action, if any, will be taken.

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1 Overview

- 1.1 This policy applies to all Council employees, except for Chief Officers and those employed under the delegated powers of governing bodies of community and voluntary controlled schools.
- 1.2 If the employee concerned is a trade union representative, the Branch Secretary/ Senior Trade Union Representative will be notified prior to any investigation.
- 1.3 This policy applies to issues where dismissal is being considered for 'some other substantial reason' or because of a statutory restriction; as defined in Appendix 1.
- 1.4 The Council's Disciplinary Rules are attached at Appendix 1. Please refer to Appendix 2 for role definitions and Appendix 3 for a glossary of Terminology used in this policy.

2 Roles and responsibilities

All colleagues

- 2.1 The Disciplinary Policy is to encourage improvement in your conduct where it falls below acceptable standards.
- 2.2 The disciplinary process must be confidential. A breach of confidentiality may result in the disciplinary process being used in respect of any breach.
- 2.3 You have a responsibility to observe and co-operate fully with any specified timeframes. Depending on your shift and working patterns, under exceptional circumstances, you may be asked to attend meetings/hearings on non-working days.
- 2.4 You are expected to attend investigation meetings and/or disciplinary hearing as arranged. If you are repeatedly unable or unwilling to attend these, the Commissioning Manager will come to a reasonable decision on how to proceed, and may conclude that a decision will be made on the evidence available and without your input.
- 2.5 You may be accompanied at any investigation meetings and/or disciplinary hearing by a Companion if you choose, plus any support as required under the Equality Act 2010.

Managers/ Commissioning Manager

- 2.6 The Disciplinary Policy is an aid to effectively managing a colleague's conduct and should not be viewed primarily as a means of imposing sanctions.
- 2.7 Managers will act promptly when problems with conduct are initially identified.

- 2.8 Managers will carry out the disciplinary process without unreasonable delay and notify colleagues of any allegations at the earliest appropriate stage.

3 Policy aspects

- 3.1 Where there are allegations that appear to involve criminal responsibility or financial irregularities affecting Council resources, the Strategic Director of Corporate Resources must be notified. They will decide whether to refer the matter to the police or take other action in accordance with the Council's Financial Procedure rules.
- 3.2 Where the allegations involve Safeguarding Children or Safeguarding Adults, this may result in disciplinary action and the Council may need to refer the matter to another organisation or professional body, including, for example, but not limited to, The Disclosure and Barring Service (DBS), Care Quality Commission (CQC), Social Work England and/or the Teaching Regulation Agency.
- 3.3 Where dismissal is being considered for 'some other substantial reason' or because of statutory restriction, managers, should speak to their Human Resources Advisor (HRA) for advice and should follow the process as outlined. This should only be considered in exceptional circumstances. The right to appeal, Section 8, will also apply. A list of what could be considered within this category is listed in Appendix 1.
- 3.4 If you raise a grievance during any stage of the disciplinary process and this relates to the disciplinary matter in question, you must present your grievance as part of your case under the Disciplinary Policy. Raising a grievance will not delay applying the disciplinary process.

4 Stage 1 – Preliminary Investigation/ Fact Find

- 4.1 Before taking any action under the Disciplinary Policy, your Manager will usually undertake some preliminary fact finding which may include a discussion with you. This will be to gather the basic facts of the case to determine the seriousness of the allegations or if any misconduct took place.
- 4.2 Your Manager will then decide if a conduct issue can be dealt with informally or if the issue should be dealt with formally.

5 Stage 2 – Informal Action

- 5.1 The majority of potential conduct issues can be dealt with through an informal dialogue between you and your Manager. In the first instance the Council expects that your Manager will attempt to resolve potential conduct issues with you informally, where appropriate.
- 5.2 A quiet word is often all that is required to resolve the situation quickly and confidentially and encourage you to improve the required level of conduct.

- 5.3 In some cases of minor misconduct, your Manager may issue you a management concern letter after your discussion with them.
- 5.4 Managers should be cautious that any informal action does not turn into formal disciplinary action. If during the discussion it becomes apparent that the matter may be more serious, the meeting should be adjourned and Managers should speak to their Human Resources Advisors (HRA) for advice.
- 5.5 If informal action fails to resolve the problem, or if this approach is inappropriate in the circumstances, we will normally use the formal procedure.

6 Stage 3 – Investigation

- 6.1 An investigation is for the Council to get a fair and balanced view of the facts of any allegations against you, before deciding whether to proceed to a disciplinary hearing.
- 6.2 The Commissioning Manager will review the preliminary investigation undertaken to decide if a full investigation is necessary.
- 6.3 If a full investigation is required, then this will be carried out by an Investigating Officer, without unreasonable delay, to establish the facts of the case. In some cases, this will require holding an investigation meeting with you as well as the collation of any evidence.
- 6.4 You may be suspended or placed on alternative duties whilst the investigation is conducted.
- 6.5 Following completion of the investigation the Commissioning Manager will review the investigation report and decide if there is a case to answer and if a disciplinary hearing will be held. At this stage the Commissioning Manager may decide on no action or informal action.

7 Stage 4 – Hearing

- 7.1 The chair will hold the disciplinary hearing and decide whether or not disciplinary action is required. Any action must be reasonable, fair and proportionate.
- 7.2 You will be invited to the disciplinary hearing in writing, and you will be given a minimum of 14 calendar days' notice. You may be accompanied at the hearing by a Companion if you choose, plus any support as required under the Equality Act 2010.
- 7.3 If you choose to be accompanied at the hearing by a Companion, they can, if you wish, explain the key points of your case. You can also confer with them during the hearing. However, they must not answer questions put directly to you or prevent the Chair asking questions or the Commissioning Manager presenting the management statement of case.

- 7.4 You should make every effort to attend hearings as arranged. If you or your Companion cannot attend, you may be offered an alternative date which must be both reasonable and not more than 5 working days of the original date.
- 7.5 The Chair will provide an outcome after hearing the case. Possible outcomes of the disciplinary hearing are:
- No action
 - Informal action
 - First Written Warning
 - Final Written Warning
 - Action Short of Dismissal including a final written warning
 - Dismissal
- 7.6 Where misconduct is confirmed, you will usually be issued with a first written warning which will remain in place for 12 months' from the date you are notified of the decision. It will then be removed from your record.
- 7.7 If there is an active first written warning on your record and you are involved in further misconduct, we will usually issue you with a final written warning. In serious cases of misconduct, we may issue a final written warning without first issuing a first written warning. In either case, the final written warning remains active for 18 months from the date you are notified of the decision. It will then be removed from your record.
- 7.8 If there is an active final written warning on your record and you are involved in further misconduct, you may be dismissed. You may also be dismissed for a serious case of misconduct, or if you are involved in gross misconduct.
- 7.9 If we find you have committed an act of gross misconduct, you will usually be dismissed without warning, without notice and without payment in lieu of notice. This is known as summary dismissal.
- 7.10 In exceptional circumstances, where the misconduct warrants dismissal but there are mitigating circumstances, action short of dismissal may be considered as an alternative to dismissal. This may include transferring you to alternative employment or reducing your seniority or level of responsibility. This may result in a reduction in pay and/or a change to your terms and conditions. If you do not agree to this, then you may be dismissed with notice or with payment in lieu of notice.
- 7.11 If dismissal is the outcome in cases of 'some other substantial reason' or 'statutory restrictions', you will usually be dismissed with notice or with payment in lieu of notice.

8 Appeal

- 8.1 You have the right to appeal the outcome of a disciplinary hearing. Use the appeal e-form available on MiDerby or the paper copy in your outcome letter. Further details on the appeals process can be found in the [Appeals Policy](#)

and the [appeals pages](#) on MiDerby.

8.2 This is the final stage of the Council Disciplinary Policy; you do not have any further internal right to appeal.

9 Support and guidance

9.1 A full description of the process including guidance, supportive information and documentation can be found at:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Colleagues without access to this information can ask their Manager for a printed copy.

Disciplinary Rules

Introduction

As a public sector employer, the Council must maintain, and is entitled to expect the highest standards of conduct from you.

It is unlikely that any set of rules will cover all possible disciplinary issues, but the information in this appendix contains guidance on the categories of misconduct and examples of acts that we will normally treat as gross misconduct, or some other substantial reason or statutory restrictions.

Misconduct - is when your inappropriate behaviour or action breaks the workplace rules; this could include your actions outside of the workplace. The following list gives examples of what we would normally regard as misconduct (but not gross misconduct). This list is not exhaustive and should be referred to as a guide.

- Minor breaches of Council policy, for example, Health & Safety, Employee Code of Conduct, Equality and Diversity, Information Security Policy, IT Policies, lesser GDPR (data protection) violations etc.
- Minor breaches of unauthorised use of, or damage to, Council property
- Absence from work that has not been authorised
- Poor attendance and timekeeping
- Refusing to follow reasonable management instructions, where it is not serious enough to be gross misconduct
- Minor breaches of confidentiality
- Unauthorised use or misuse of technology
- Using obscene language or otherwise behaving offensively
- Being careless when carrying out your duties
- Wasting time during your contracted working hours
- Smoking in areas where smoking is not allowed.

Gross misconduct - is defined as conduct so serious that it justifies dismissal. This is because the significance of the act affects the contractual relationship between you and the Council. The following list gives examples of what we would normally regard as gross misconduct. This list is not exhaustive and should be referred to as a guide.

- Serious breaches of Council Equality and Diversity Policies
- Bullying or physical violence
- Fraud, theft, or any act of dishonesty, including deliberate fraudulent benefit claims
- Serious breaches of unauthorised use of, or damage to, Council property
- Serious safeguarding contraventions
- Serious negligence or carelessness, this can be a serious failure to achieve the standard of skill and care expected from you and the impact this has on your employment.
- Serious health and safety breaches or deliberate acts endangering health and safety
- Serious breach of legislation such as The Children Act or Care Act
- Serious breach of GDPR (data protection) legislation or our data protection policy

- Unauthorised access, disclosure, or other use of confidential or personal information
- Causing loss, damage or injury through serious negligence
- Unlawful harassment or discrimination, including hate crime
- Knowingly accessing websites containing offensive, obscene or pornographic material
- Serious misuse of Council technology and/or equipment
- Deliberately accessing or circulating inappropriate material
- Serious insubordination or refusal to obey reasonable management instructions
- Serious breaches of the Employee Code of Conduct
- Serious breaches of trust
- Serious breaches of confidentiality
- Taking, being in possession of or being under the influence of alcohol, illegal drugs or other substance abuse
- Significant abuses of official position
- Engaging in behaviour that may bring the Council into serious disrepute.

Some other Substantial Reason for Dismissal (SOSR) – The following list gives examples of what we would normally regard as SOSR. This list is not exhaustive and should be referred to as a guide.

- Business reorganisation
- Refusal to accept changes to terms and conditions (dismissal and re-engagement)
- Personality clashes/ relationship breakdown
- Expiry of a limited term contract
- Reputational risk
- Third party pressure
- Protection from competition/ conflict with business interests
- Replacement employees – section 106 of the Employment Rights Act 1996 (for example, posts for maternity cover)

Statutory Restriction is defined as a circumstance where it is no longer possible to employ you because of a law, provision or regulation which prevents you from doing so. The following list gives examples of what we would normally regard as Statutory Restriction. This list is not exhaustive and should be referred to as a guide.

- Loss of driving licence
- Immigration status; i.e., an of expiry of work permit/visa
- Failing to obtain or maintain minimum qualification required for the role
- Charged with or convicted of a criminal offence that impacts the contract of employment

The categories are neither exclusive nor exhaustive, and dismissal on the grounds of gross misconduct could therefore occur for acts of a similar level of seriousness that are not referred to, where the contractual relationship between Derby City Council and the employee has broken down.

Role Definitions

In this policy, unless the context otherwise requires, the following expressions will have the following meanings:

'Chief Officer' means an administrative and executive head of a department, directorate or service. This includes Strategic Directors and Service Directors.

'Manager' means the person that you report to. They may also be the Commissioning Manager.

'Commissioning Manager' means a manager responsible for process co-ordination and compliance. They will be responsible for the decision-making on an investigation outcome and will also be responsible for presenting the management statement of case at a hearing.

'Companion' means a work colleague, a trade union official, or a workplace trade union representative who's certified or trained in acting as a Companion.

'Investigating Officer' means a suitable person appointed to this process role.

'Chair of Hearing' or 'the Chair' means a suitable manager appointed to this process role.

'Chair of the Appeal' means a suitable manager at the required decision-making level appointed to this role.

Glossary

In this policy, unless the context otherwise requires, the following terms will have the following meanings:

'Allegation' means a claim or assertion that a Council colleague has done something illegal or wrong, without proof.

'Behaviour' means the way in which a Council colleague acts or conducts themselves, especially towards others.

'Calendar days' means consecutive days including Saturdays and Sundays.

'Confidentiality' means keeping a matter private and not disclosing information to other people; other than your companion.

'Conduct' means the manner in which Council colleagues behave, especially in a particular place or situation.

'Management concern letter' means a letter issued by your manager, outlining the discussion held and any improvements required from you.

'Non-working day' means any day on which Council colleagues are not available for work or rostered to work; for example, part time, shift or working patterns.

'Working day' means any day on which Council colleagues are contracted to work.