

DISCIPLINARY PROCEDURE



1. INTRODUCTION

- (i) The aim of standard disciplinary procedures for all staff is to ensure uniformity of treatment between one individual and another and between one group of staff and another; to ensure justice for individual employees; to provide protection to the efficiency and smooth running of the Authority, and to ensure that management, unions and employees are aware of their rights and obligations, in respect of disciplinary and appeals machinery.
- (ii) These procedures should not be viewed primarily as a means of imposing sanctions but instead, as a means of emphasising and encouraging improvements in individual conduct.
- (iii) These procedures apply to all Local Government Services Scheme and craftworker staff and employed under a contract of service by Ribble Valley Borough Council.
- (iv) These procedures reflect the principles outlined in the ACAS Code of Practice on Disciplinary Procedures.
- (v) It is recognised that in cases of alleged lack of capability, the following of a normal disciplinary procedure is sometimes inappropriate.
- (vi) This procedure shall be subject to joint review.
- (vii) In appropriate cases, this policy should be read in conjunction with the Council's whistleblowing policy.
- (viii) This procedure may not be applicable in relation to termination of contract during probationary periods.

2. DEFINITIONS

- (i) In this document where the term "recognised representative" is used, this is meant to be a shop steward, branch official or representative appointed and accredited by UNISON, or by another recognised Trade Union.
- (ii) In this document a "full-time officer" means an official employed by a nationally recognised negotiating body to represent its members.
- (iii) In this document 'gross misconduct' refers to a more grave offence such as, but not exclusive, to the following list:
 - (a) theft, fraud and deliberate falsification of records;
 - (b) physical violence;
 - (c) serious bullying or harassment;
 - (d) deliberate damage to property;

- (e) serious insubordination;
- (f) misuse of an organisation's property or name;
- (g) bringing the employer into serious disrepute;
- (h) serious incapability whilst on duty brought on by alcohol or illegal drugs;
- (i) serious negligence which causes, or might cause, unacceptable loss, damage or injury;
- (j) serious infringement of health and safety rules;
- (k) serious breach of confidence (subject to the Public Interest Disclosure Act 1998).

3. REPRESENTATION

Employees are entitled to be represented by their trade union representative, or by a workplace colleague, at all of the formal stages of the procedure.

Representation is not necessary during the informal stages of the procedure.

In cases of suspension (ie suspected gross misconduct) there may not be enough time to find a representative.

No formal action should be taken against a trade union representative, shop steward, safety representative, or any other union representative, until the circumstances of the case have been discussed with their Regional Officer.

4. RIGHTS AND RESPONSIBILITIES

Employees have a duty to co-operate with procedures and to be accompanied at formal proceedings.

Trade union representatives or other companions have a duty to act in the employee's interests.

Management have a duty to act in accordance with agreed procedures; to investigate before taking action; provide support as appropriate; to take account of any mitigation, ensure that all action is fair and proportionate.

5. COUNSELLING

The common initial response of a Supervisor to instances of unsatisfactory conduct or poor standards of performance will be counselling on a one-to-one basis. This is not disciplinary action. This type of counselling would follow instances of carelessness, minor misconduct, or incompetence and disciplinary action would only follow where such instances continued. Counselling should therefore be regarded as a very important aspect of the Manager's or Supervisor's role. No written record of counselling should be kept on the employee's file. The Supervisor may wish to keep a brief note of any counselling for reference purposes.

6. THE PROCEDURE

- (i) The breaches of discipline covered by this procedure fall into three main categories; minor offences, serious offences and gross misconduct.
- (ii) It is for the Authority to decide upon the delegation of responsibilities for administering disciplinary procedures. Each employee should be informed, in writing, on appointment or as soon as possible thereafter, of the details of this delegation insofar as they apply to him or her. An employee should thus be informed whether he/she can be dismissed only by a decision of the Council or by an officer. In those cases where an employee can be dismissed by an officer, the employee should also be informed which officer has the power of dismissal delegated to them. In the case of employees, whose employment can be terminated only by a decision of the Council, power of dismissal shall not be delegated to any officer.
- (iii) No disciplinary hearing should be convened, until the officer proposing such a hearing is satisfied that good reason for such action has been established and has discussed the matter with the Personnel Section.
- (iv) When it is decided that it is necessary to hold a disciplinary hearing, an employee shall first be notified, in writing, of the complaints against him/her and of the opportunity for preparing and stating a case, accompanied if so desired, by a recognised representative or officer of a recognised trade union or by a fellow employee of his/her choice. The employee concerned shall be given at least three working days (or longer by mutual agreement) written notice of the date and time set for the hearing, to enable him/her to discuss the matter with his/her representative. The employee shall also be notified of any witnesses who will be called and will, on request, be given details of the evidence to be used.
- (v) Employees and the person that accompanies them are obliged to make "every effort" to attend the meeting. Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause, management are entitled to make a decision based on the evidence available.
- (vi) No disciplinary hearing shall be convened against a recognised trade union representative or a recognised safety representative, until the circumstances of the case have been discussed with a full-time officer of the trade union concerned. It is recognised that there may be occasions when it would be necessary to suspend a representative on full pay and in such cases the circumstances must be reported forthwith to the appropriate full-time officer.
- (vii) When determining the disciplinary action to be taken, the Supervisor or Manager should bear in mind the need to satisfy the test of reasonableness in all circumstances. As far as possible, account must be taken of any mitigating factors.
- (viii) Where it is established that an individual is blameworthy, the following forms of disciplinary action are allowed for in the procedure:
 - (a) An oral warning.
 - (b) A written warning.

- (c) A final written warning (which might not be preceded by a written warning).
- (d) Downgrading and/or transfer (usually as an alternative to dismissal).
- (e) Dismissal.
- (ix) The individual must be provided with a notice signed by a duly authorised officer, detailing the disciplinary action taken and containing a clear statement of the reasons for the action against the employee, together with an indication of the right of appeal.
- (x) The Personnel Section should be consulted about all disciplinary hearings.

7. SUSPENSION

Suspension on full pay shall only be authorised by an appropriate officer or member of the Authority and is NOT a disciplinary measure, but merely a holding action pending enquiries.

- (i) Suspension should only be implemented to enable a thorough examination of the facts to be made and/or when it is clearly undesirable for the employee to remain on duty.
- (ii) The reason for the suspension shall be confirmed, in writing, to the employee forthwith, who at the same time should be told that - except in cases involving police enquiries, or where legal proceedings are pending, or wherever a formal Committee of Inquiry has been or is being established - if suspension from duty lasts for a period of three weeks and no disciplinary charges have been made, and communicated in writing, there is a right of appeal to the Council against continuation of suspension.

8. ORAL WARNING

- (i) In cases of minor offences not justifying a written warning, a duly authorised officer or member of the Council may give an oral warning which would be confirmed in writing.

9. WRITTEN WARNING

- (i) In cases of repetition of minor offences or of a more serious offence not justifying a final warning, an employee may be issued with a written warning. Such a warning shall only be issued by a duly authorised officer or member of the Council.
- (ii) The warning shall include:
 - (a) A clear statement of the reasons for the action against the employee, together with an indication as to the right of appeal, a summary of the alleged facts, and, where appropriate, an indication of what is expected of the individual in the future.
 - (b) An explanation that the warning will be entered on the employee's record and a notification that any further offence(s) could result in the issue of a final warning, unless there are mitigating circumstances.

- (c) An assurance that after 6 months of satisfactory conduct from the date of the warning, it shall be totally disregarded for disciplinary purposes. The member of staff will have the right to have this confirmed in writing.

10. FINAL WRITTEN WARNING

- (i) In cases justifying the issue of a final warning, or in instances of misconduct sufficiently serious not to be tolerated a second time and therefore warranting a single final warning, such a warning shall only be issued by a duly authorised officer or member of the Council.
- (ii) A final warning shall include:
 - (a) A clear statement of the reasons for the action against the employee, together with an indication as to the right of appeal, a summary of the alleged facts, and where appropriate, an indication of what is expected of the individual in the future.
 - (b) An explanation that it is a final warning, which will be entered on the employee's record and notification that any further offence(s) or unsatisfactory performance could result in dismissal, unless there are mitigating circumstances.
 - (c) An assurance that after 12 months of satisfactory conduct from the date of the warning, it shall be totally disregarded for disciplinary purposes. The member of staff will have the right to have this confirmed in writing.

11. DOWNGRADING AND/OR TRANSFER

As an alternative to dismissal and/or as an addition to a disciplinary warning, downgrading and/or transfer may be considered as appropriate. When notified in writing of the sanctions to be applied, the employee shall also be notified of the right of appeal against the decisions and the reasons for the action being taken.

12. ACTION SHORT OF DISMISSAL

Action short of dismissal may include:

- (i) A longer period for the final written warning to remain in force.
- (ii) Withholding of incremental progression for a specified period.
- (iii) Transfer to other duties (including lower graded duties, and without protection of pay).
- (iv) Suspension without pay for up to two weeks.

13. DISMISSAL

Except in cases justifying immediate suspension from duty or, exceptionally summary dismissal, employees shall, subject to any further enquiries that may be required, first be given a warning, in writing, signed by the appropriate officer, that any further repetition by the employee might result in dismissal.

(i) Dismissal following a Written Warning:

Except in cases of gross misconduct, no employee shall be dismissed unless a full investigation of the latest incident has been carried out, in order to establish the facts.

(ii) Dismissal following gross misconduct:

In cases of gross misconduct leading to summary dismissal, the following conditions must be satisfied:

(a) Following full investigation there are reasonable grounds for concluding the complaint is established.

(b) The nature of the offence is such that it affects the relationship between the employee and the Authority or between the individual and any superior, colleague, client or member of the public with whom he/she might have contact in the performance of his/her duties, to such an extent that the employee cannot any longer reasonably be retained in his/her present post or other suitable alternative employment available with the Authority.

14. APPEALS AGAINST DISCIPLINARY ACTION

(i) *Employment Tribunals*

It is accepted that these procedures will in no way preclude any employee or representative acting on his/her behalf, registering an appeal against dismissal with the appropriate Employment Tribunal, although it may be that such action would carry with it a request for any hearing by the Tribunal to be held in abeyance pending the hearing of an appeal by the Council. In this way, if the appeal to the Council is not successful, the right of appeal to the Employment Tribunal is not prejudiced. Employees are strongly advised to seek the advice of their Trade Union.

(ii) Employing Authority

(a) Any employee who is aggrieved by disciplinary action shall have the right of appeal. The right of appeal will be as follows:

<u>Type of Action:</u>	<u>Grade of Staff:</u>	<u>Appeal to be heard by:</u>
Warnings, Downgradings and Transfers	Staff <u>not</u> directly responsible to Chief Executive	Chief Executive
	Staff directly responsible to Chief Executive	Authority Panel
Dismissal	All Staff	Authority Panel

Provided that no-one will hear any appeal, or make any decision arising from it, if they have been involved in making the complaint or making the decision which is appealed against.

- (b) It is important that appeals should be made and heard quickly. Employees who are the subject of any disciplinary action including dismissal, should be provided - within 7 days - with a notice, in writing, stating the nature of the disciplinary action, the reasons for the disciplinary action, together with a summary of the alleged facts on which the disciplinary action is based, and the employee's right of appeal. Any appeal by the employee should be lodged, in writing, to the Chief Executive within 7 days of the receipt of the written notice.

The hearing of the appeal should take place within 5 weeks of the receipt of the notification of appeal, although either party, with the consent of the other, may in exceptional circumstances, be entitled to extend this period. The employee shall be given at least 7 working days notice of the date of the hearing.

- (c) Where the appeal is to be heard by the Chief Executive, the Personnel Section will make arrangements for the appeal to be heard. The procedure set out in Appendix B shall be followed. Where a Panel of the Authority is to hear the appeal, the Authority will set up Appeal Committees consisting of not less than 3 members of the Authority, to hear appeals. The Chairman of this Panel shall be a member of the Personnel Committee of the Authority.
- (d) The members of the Appeal Committee must not include any member of the Authority or Committee or sub-committee of the Authority who has been directly involved in the circumstances leading to disciplinary action. No officer of the Authority, who has been directly involved in the circumstances that appeared to indicate the need for disciplinary action at an earlier stage of the disciplinary procedure, shall be present at the appeal hearing as Secretary of the Appeal Committee or in any other capacity, except as a witness or as a representative of the Authority.
- (e) The staff side and management side should each prepare a statement of case, in writing, and send it to the Secretary of the Appeal Panel to arrive, if possible, at least 7 days prior to the date set for the hearing of the appeal. If both statements of case have been received before the hearing, the Secretary of the Appeal Panel will send a copy of management's statement of case to the staff side and vice versa. The Appeal Committee will be provided with any statements of case that have been received by the Secretary.
- (f) The employee shall have the right of appearing personally before the Appeal either alone or accompanied by a recognised representative, or officer of a recognised trade union, or a fellow employee of his/her choice.
- (g) At the hearing of an appeal, the procedure given at Appendix B shall be observed.

Signatures:

..... Chief Executive

..... Unison Branch Secretary

APPENDIX A

Schedule of delegated authority to take disciplinary action.

Staff not directly)	
responsible to)	Chief Officer
Chief Executive)	

Staff directly)	
responsible to)	Chief Executive
Chief Executive)	

APPENDIX B

Appeal Hearing Procedure

- (a) The Authority's representative shall state the Authority's case in the presence of the appellant and his/her representative and may call witnesses.
- (b) The appellant or his/her representative shall have the opportunity to ask questions of the Authority's representative and witnesses (immediately following their individual statements).
- (c) The members of the Appeal Committee shall have the opportunity to ask questions of the Authority's representative and witnesses.
- (d) The Authority's representative shall have the opportunity to re-examine his/her witnesses on any matter referred to in their examination by members of the Appeal Committee, the appellant or his/her representative.
- (e) The appellant or his/her representative shall put his/her case in the presence of the Authority's representative and may call witnesses.
- (f) The Authority's representative shall have the opportunity to ask questions of the appellant, his/her representative and his/her witnesses (immediately following their individual statements).
- (g) The members of the Appeal Committee shall have the opportunity to ask questions of the appellant, his/her representative or his/her witnesses.
- (h) The appellant or his/her representative shall have the opportunity to re-examine his/her witnesses on any matter referred to in their examination by members of the Appeal Committee or the Authority's representative.
- (i) The Authority's representative and the appellant or his/her representative shall have the opportunity to sum up their cases, if they so wish. The appellant or his/her representative shall have the right to speak last. In their summing up, neither party may introduce any new matter.
- (j) Nothing in the foregoing procedure shall prevent the members of the Committee from inviting either party to elucidate or amplify any statement he/she may have made, or from asking him/her such questions as may be necessary to ascertain whether or not he/she proposes to call any evidence in respect of any part of his/her statement or alternatively, whether he/she is in fact claiming that the matters are within his/her own knowledge, in which case he/she will be subject to examination as a witness under (b) or (f) above.
- (k) The Committee may, at their discretion, adjourn the appeal in order that further evidence may be produced by either party to the dispute.
- (l) The Authority's representative, the appellant, and his/her representative and witnesses shall withdraw.
- (m) The Committee shall, with the officer appointed as Secretary to the Committee, deliberate in private, recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties shall return notwithstanding only one is concerned with the point giving rise to doubt.