

Introduction

High standards of employee conduct and the maintenance of discipline are essential for the efficient operation of Newport City Council and the provision of effective service delivery.

This policy has been developed for the well being and safety of employees and in accordance with ACAS Code of Practice.

Aims of the Policy

To provide a method for dealing with short comings in conduct and behaviour.

The general standards of conduct and behaviour expected of Council employees can be found in the [Employee Code of Conduct](#).

Scope

This policy applies to all employees with the exception of those employees working in maintained schools under the direct control of a School Governing Body.

School Based Employees:

Newport City Council commend this policy to individual Governing Bodies for adoption. If adopted by a Governing Body, the policy will apply to all employees under the direct control of that Governing Body.

To be read in conjunction with:

Disciplinary Guidance
Capability Policy
Probationary Policy
Job Security Policy
Management of Attendance Policy

Principles

There is an obligation on all Council employees to conduct themselves in an appropriate manner. This includes conducting themselves in accordance with the Law; any code of ethics or practice associated with their profession or trade; any rules specifically related to the employee's workplace or work activity and within generally accepted standards of social and moral behaviour.

The policy does not apply to:

- Short comings related to performance
- Termination of contract on the grounds of:
 - Fixed term or temporary appointment
 - During or at the end of a probationary period
 - By reason of redundancy
 - Resignation by the employee, or other termination by mutual consent.

The Council / School will assist employees so far as is practicable in achieving acceptable standards of conduct by bringing to their attention rules of the workplace and by providing such training as is deemed necessary to assist them in undertaking their work effectively and safely.

The Council / School will, however, not hesitate in taking appropriate action if an employee fails to meet required standards of conduct or behaviour.

Managers must address disciplinary issues in a fair and consistent manner and within a reasonable time frame. Except in the case of gross misconduct, the principal purpose of disciplinary action should be to help and support employees to improve their conduct, and to ensure they work effectively. Every effort should be made to address the breach in conduct with an appropriate level of response and in the first instance this may be through management support.

Managers addressing an employee's conduct or behaviour must ensure employees at every stage of the process are advised of the nature of the breach in conduct or behaviour; that no disciplinary action is taken against an employee until the case has been investigated by an Investigating Officer, and if deemed appropriate heard by a Disciplining Officer, and the employee is given the opportunity to state their case. In some circumstances it will be appropriate for the Investigating Officer to be from a different service area.

Before any disciplinary hearing takes place an employee shall be informed that the hearing is in accordance with the Disciplinary Policy.

Employees should be advised of their statutory right to be represented by a Trade Union Representative or a work colleague at any of the formal stages of this policy. Employees will also have the right to appeal against any disciplinary action taken against them.

In certain situations the breach of discipline may need to be addressed externally as well as internally by the Council, for example allegations surrounding child protection matters or of fraudulent activity. This will be dependant on the nature of breach and the employee's role within the Authority. In cases where this arises, no action should be taken without consultation with Human Resources as the Council's internal disciplinary processes may have to be held in abeyance whilst an alternative investigation(s) takes place, for example a criminal investigation or an investigation by Internal Audit.

Criminal offences which occur outside employment should not be treated as automatic reasons for dismissal, regardless of whether the offence has any relevance to the duties of the individual as an employee. The main considerations should be whether the offence is one that makes the individual unsuitable for their type of work or unacceptable to other employees. Employees should not be dismissed solely or automatically because a charge against them is pending or because they are absent through having been remanded in custody.

MANAGEMENT SUPPORT

Management support is the responsibility of all managers and **must** be a regular feature of the employee/manager relationship.

Employees should receive informal advice, guidance and coaching from their manager on minor incidents and/or minor problems with standards of conduct and behaviour as part of the normal working relationship. Whenever possible, minor disciplinary matters should be dealt with by the appropriate manager. This does not constitute part of the formal disciplinary procedure. However, it should be made clear to the employee that if standards of conduct or behaviour are deemed to be unsatisfactory that the formal disciplinary procedure may apply.

The formal disciplinary procedure will be applied when previous attempts at management support have failed, or a matter is considered so serious as to make management support inappropriate. Repeated or minor offences and serious matters may be referred to the relevant Section Head and any Officer dealing with a disciplinary matter may, if they consider the case sufficiently serious, refer it to a Senior Officer above their own tier. All breaches of discipline will be dealt with on merits of each case, taking into account the employee's past record.

DISCIPLINARY PROCEDURE

General

The Council's / School's Formal Disciplinary Procedure includes a Disciplinary Process and an Appeal Process. The disciplinary procedure is summarised in a [flowchart](#).

It is the responsibility of the individual conducting a formal disciplinary process to make sure that they document the stages that they follow and any decisions taken. In addition they must ensure appropriate minutes of all disciplinary / investigation meetings are taken, and accordingly arrange for somebody in the Service Area / School to undertake this role. Minutes taken need to be available within a reasonable timeframe and must be signed and dated by the employee. The minutes must be used as a formal statement of the meeting and must be included in a Disciplinary Report.

If an employee has a recognised disability and requests the inclusion of a companion, for example a support worker or advocate with knowledge of the disability and its effects, then this should be considered under the Policy and may be deemed to be a reasonable adjustment.

Trade Union Officials

For the purposes of this policy a Trade Union Official is defined as one of the following:

- Full time Officer employed by a Trade Union
- Lay Trade Union Representative, subject to certification by the Union that they have received training or are experienced in acting as a worker's companion.

Certification may take the form of a card or letter for the above representatives. An employee has the right to request that an official from a Trade Union that they are a member of not recognised by Newport City Council to act as their representative. In these circumstances, appropriate certification must be provided by the representative prior to any meeting or hearing taking place.

The Regional Office will be informed of the disciplinary action being considered, after obtaining the employee's agreement. Where disciplinary action is being considered against an employee who is a Trade Union Representative, the normal disciplinary procedure should be followed.

Work Colleague

A work colleague is defined as somebody who is currently employed by Newport City Council. However, a work colleague should not be somebody who may prejudice the hearing or have a conflict of interest.

A worker who has been requested to accompany a colleague will be allowed a reasonable amount of time off to fulfil the responsibility. Time off should not only cover the hearing itself but also a reasonable amount of time to familiarise themselves with the hearing and confer with the employee facing the allegations.

At the hearing the work colleague will have the right to address the hearing, but will have no right to answer on behalf of the employee.

FORMAL DISCIPLINARY PROCESS

Investigation

Where it is believed that an employee's conduct or behaviour warrants formal disciplinary action, an Investigatory Officer will be appointed to investigate the case.

Restriction of Duties/ Redeployment/ Suspension

Where the allegations against an employee are deemed to be potential gross misconduct, the Investigatory Officer (or an appropriate manager if an Investigatory Officer remains to be appointed) should arrange a case management discussion with HR. The purpose of the discussion will be for a considered decision to be made as to whether or not an employee should have their duties restricted, be redeployed to a suitable alternative post, or in the most serious cases suspended on full pay. The case management discussion must take place prior to any formal change of duties.

The decision taken must be confirmed in writing to the employee and should state the grounds for the action taken. The letter must also state that the decision taken is without prejudice as it is not an assumption of guilt, nor is it a disciplinary sanction.

In circumstances where an employee's duties are restricted, they are redeployed or suspended, the Investigating Officer must ensure there is an ongoing review of the decision taken. The Head of Service / Head Teacher in conjunction with the Investigating Officer and Human Resources should ensure that action taken of this nature is not unnecessarily protracted.

Outcome of Disciplinary Investigation

If the Investigating Officer is satisfied that the facts they have gathered are sufficient for disciplinary action to be taken against an employee, then the case should proceed to a disciplinary hearing. The Investigating Officer will present the case at the hearing as a representative of the Council / School to the Disciplining Officer.

The Investigating Officer should determine whom would be the most appropriate to act as the Disciplining Officer. This will be dependent on the nature of the allegations and consideration may be given to appointing a Disciplining Officer from an alternative service area where this is deemed appropriate.

Where the Investigating Officer determines that the employee has no case to answer regarding the allegations, this should be confirmed to the employee in writing.

Notification of Hearing

Where it is determined that disciplinary action should be taken, the employee should be invited to a disciplinary hearing in writing, giving a minimum of seven calendar days' notice.

The full investigation report including all documents considered relevant by the Investigating Officer should be sent with this letter to the employee. A duplicate copy of the investigation report should also be sent to the Disciplining Officer and the HR representative at the same time. In addition, if the employee indicates that they will be represented at the hearing by a Trade Union Representative or a work colleague, their representative should also be forwarded a duplicate copy of the report.

Witnesses

Where the Investigating Officer intends to call witnesses to a disciplinary hearing they should notify the employee in writing when they are invited to attend the formal disciplinary hearing. If an employee intends to call relevant witnesses they should notify the Investigating Officer on receipt of the letter advising them of the date of the disciplinary hearing, including the names of the witnesses they intend to call. It is the responsibility of whoever is calling the witness to invite the witness to attend the disciplinary hearing. If it is the employee the Investigating Officer will ensure that employees who agree to act as witnesses can be released from their duties.

Disciplinary Hearing

The procedure to be followed in a disciplinary hearing is set out in the [Disciplinary Hearing and Appeal Hearing process](#).

Where an employee wishes to be represented by a Trade Union Representative or a work colleague at the hearing, it is the employee's responsibility to ensure their representative's availability. Where an employee's representative is unavailable to attend the hearing an alternative date should be arranged within seven calendar days of the original date.

The employee's chosen representative will not be allowed to:

- Answer questions of fact on the employee's behalf
- Address the hearing if the employee does not wish it
- Prevent the employer from explaining their case

In the event of a hearing proceeding in an employee's absence, the employee has the option to send their representative to make submissions to the hearing on their behalf and / or submit written representations, witness statements and documentary evidence if they so wish for consideration during the hearing.

At the conclusion of a disciplinary hearing the Disciplining Officer shall, where possible, immediately or by the end of the following working day, determine the appropriate action. The Disciplining Officer will need to

take account of all the circumstances of the case, the employee's record and any other relevant factors. This decision should be communicated to the employee and confirmed in writing. In certain circumstances it may not be possible to reach a decision without further investigation. Should this be the case an employee should be notified of this and any action determined as a result of this be confirmed in writing.

Disciplinary Action

Where the Disciplining Officer determines that the facts of a case call for disciplinary action, the following outcomes will be considered:

First Written Warning

A written warning will be considered when previous advice and guidance has failed, the employee has not met the standard and conduct expected or where the issue or conduct justifies a written warning for a first offence. When a written warning is issued it will be placed on the employee's personal file and remain in force for a specified period of usually not less than six months but no more than twelve months.

Repetition of this, or any other, offence during the specified period will be subject to full consideration of the circumstances and, if appropriate, further disciplinary action will be taken in accordance with this Policy.

Final Written Warning

A final written warning will be considered either where, despite the issue of a previous written warning the employee has failed to improve to the standard expected, or where the issues or conduct is more serious and justifies a final written warning for a first offence. When a final written warning is issued it will be placed on the employee's personal file and remain in force for a specified period of usually not more than twelve months (although this may be extended up to twenty four months in exceptional circumstances).

Repetition of this, or any other, offence during the specified period will be subject to full consideration of the circumstances and if appropriate, further disciplinary action will be taken in accordance with this Policy, which may include dismissal.

Further Action (including Dismissal)

An employee shall not expect to be dismissed (other than for gross misconduct) for a first breach of discipline. Where a final written warning has failed to bring about the required improvement, the further action may include dismissal.

If, following a disciplinary investigation and hearing, allegations of gross misconduct are proven on the balance of probabilities, an employee may be immediately dismissed, without notice.

Where dismissal is decided as an appropriate form of action, any mitigating circumstances will be taken into account by the Disciplining Officer. If, following consideration of this mitigation, dismissal is not seen to be appropriate, alternative disciplinary action short of dismissal may be taken.

Disciplinary action short of dismissal may include reduction in rank or status or redeployment, transfer to another post or place of work. These actions should only be taken following consultation with Human Resources.

Notification of Disciplinary Action

Where a formal warning is given or the employee is dismissed, written notification **must** be issued to the employee.

Appeal Procedure

Employees have seven calendar days in which to exercise their right of appeal from the date of the outcome letter.

An employee who is aggrieved by disciplinary action which results in the issue of a first written or final written warning has the right to appeal to a manager senior to the one who has issued the warning. The letter of appeal should be addressed to the appropriate manager and state the grounds of appeal.

An employee who is aggrieved by disciplinary action which results in further action including dismissal has the right to appeal to a Members' Appeal Panel. The letter of appeal should be addressed to the Head of People and Transformation stating the grounds of appeal.

School Based Employees

A school based employee who is aggrieved by disciplinary action has the right to appeal to the Staff Discipline and Dismissal Appeal Committee of the school's Governing Body. The letter of appeal should be addressed to the Clerk to the Governing Body and state the grounds of appeal.

Appeal Hearings

An appeal hearing must be arranged within seven calendar days of receipt of the appeal letter. An individual should be invited to an appeal meeting in writing, giving at least seven calendar days' notice. A duplicate copy of the full investigation report presented in the disciplinary hearing should be provided to the Appeal Hearing Officer in advance of the appeal hearing. At the appeal hearing the aggrieved employee, their representative, the Investigating Officer and the Disciplining Officer must be available to attend the proceedings.

The appeal hearing should consider whether the penalty imposed is appropriate. The outcome of the appeal hearing may be:

- Dismiss the appeal and uphold the decision taken
- Uphold the appeal and overturn the decision taken
- Consider the appeal and recommend an alternative sanction. It should be noted that this could lead to a reduction to the sanction issued or the level of the sanction being increased.

Following the appeal hearing any decision must be communicated in writing. In certain circumstances it may not be possible to reach a decision without further investigation. Should this be the case an employee should be notified of this and any action determined as a result of this be confirmed in writing.

The decision reached at the appeal meeting is final; there is no further right of appeal.

Disciplinary Hearings and Appeal Hearings will follow the model set out in [Disciplinary Hearing and Appeal hearing Process Table](#)