



Disciplinary Policy

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Document summary

The County Council has clear expectations when it comes to the conduct and behaviour of its employees. Most of the time these are adhered to but on occasion the conduct of employees falls below the required standard.

The aim of this policy is to formulate arrangements which will ensure a fair, effective and consistent method of dealing with all disciplinary matters throughout the County Council.

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About this document:

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<p>Accessibility help</p> <p>Zoom in or out by holding down CTRL and turning the mouse wheel.</p> <p>CTRL and click on the table of contents to navigate.</p> <p>Press CTRL and Home key to return to the top of the document</p> <p>Press Alt-left arrow to return to your previous location.</p> <p>References shown in blue text are available on the Intranet and/or the Webshop.</p> <p>References shown in underlined blue text are hyperlinks to other parts of this document.</p>	

Disciplinary Policy

Key points

- The principle features of this disciplinary policy have been defined in accordance with the ACAS (Advisory, Conciliation and Arbitration Service) Code of Practice on Disciplinary Procedures.
- Each employee has a responsibility to be familiar with the rules and standards of conduct which relate to his/her area of work and with the County Council's standards (see [Code of Conduct and Conflict of Interest Policy](#))
- This policy applies to all County Council employees including schools, see 1.1 for details.
- This policy is supported by a series of toolkit documents which form the procedural guidance for managers to undertake investigations and arrange disciplinary actions.
- The focus of any action taken under this policy, including formal sanctions, will normally be to bring about the required improvement, not merely to punish.

1. Definitions and principles

- 1.1. This policy applies to all County Council employees, subject to the list of exclusions below. This policy applies to schools based employees where the Governing Body has adopted this policy, including any amendments made by the Governing Body of the school. Throughout this policy, reference to the 'County Council' therefore includes schools. Faith schools and/or church aided schools may wish to addend further examples of misconduct that relate to their particular faith or religious beliefs.
 - 1.1.1. In the case of Newly Qualified Teachers please refer to the [East Sussex NQT Induction Handbook](#) and the document [NQT induction: Guidance on Managing Poor Performance](#).
 - 1.1.2. For all other staff in their probationary period, this disciplinary policy does not apply and any instances of misconduct should be dealt with under the [Supported Introduction to Employment Policy](#).
 - 1.1.3. Employees on Teachers' terms and conditions with less than 1 year's continuous service with the County Council may still be subject to a shortened disciplinary/dismissal procedure using the principles set out in the [Supported Introduction to Employment Policy](#).
 - 1.1.4. Where a manager believes that an employee's performance is a matter of capability, the [Procedure for Managing Unacceptable Performance](#) should be used.
 - 1.1.5. In cases of sickness absence, the [Attendance Management Procedure](#) should be used.
- 1.2. Managers, in operating the procedure, will apply the County Council's commitment to equality of opportunity, by treating all employees fairly and without discrimination and considering reasonable adjustments where appropriate.
- 1.3. No disciplinary hearing will be held until the case has been fully investigated by the Investigating Officer.

- 1.4. An employee shall have the right under this policy to:
 - be notified in writing of the reasons for the disciplinary action being considered;
 - be advised of the nature of the evidence against them;
 - have their response to any allegations heard in good faith and without being prejudged;
 - be accompanied at any formal stage by a trade union representative or work place colleague not acting in a professional capacity (see [Section 3](#));
 - appeal against any disciplinary action which results in a formal warning or dismissal.
- 1.5. Disciplinary action shall not be taken against any employee for pursuing reasonable action concerned with preventing, or reducing risks, to the health & safety of other employees, or any acts covered by the [Whistleblowing Policy](#). However, action will be taken against employees who make malicious claims under the [Whistleblowing Policy](#).
- 1.6. Some roles within the County Council may have further frameworks or standards that are specific to those roles or professions, such as Teachers and Social Workers. While issues of discipline may be considered within the remit of this policy, consideration should also be given to any other guidance on the standards required of a particular profession.

2. The right to be accompanied

- 2.1. In all cases where action is to be taken under the formal stages of the [Disciplinary Policy](#), the employee has the right to be accompanied by a trade union representative or by a work place colleague not acting in a professional capacity. It is the responsibility of each employee to arrange their own companion.
- 2.2. There may be exceptional circumstances where this is not possible, such as immediate suspension for alleged gross misconduct.
- 2.3. The companion should be allowed to address a hearing to put forward and sum up the employee's response to the allegation(s) and confer with the employee during a hearing. They do not, however, have the right to answer questions on the employee's behalf, address a hearing if the employee does not wish it or prevent the employer from explaining their case.

3. Accredited representatives of trade unions

- 3.1. Disciplinary action against an accredited union representative can lead to a dispute if it is seen as an attack on the functions of a trade union. Therefore, although the same standards shall apply to trade union representatives as other employees, formal action under this procedure will not be taken against accredited representatives without a senior trade union representative or full-time official being notified, subject to obtaining the employee's agreement.

4. Support available to employees during the process

- 4.1. At any time during the process an employee may wish to access the staff counselling service offered as part of the Employee Assistance Programme. Details are available on the intranet and the Webshop.
- 4.2. The County Council's recognised trade unions may also provide advice and support to their members.

5. The relationship between disciplinary procedures and grievances

- 5.1. Where an employee raises a grievance during a disciplinary process, the disciplinary process may or may not be temporarily suspended to deal with the grievance. Where the two are related, it may be more appropriate to deal with them together. Each case will be considered on its merits to ensure that the County Council is acting reasonably.

6. Confidentiality

- 6.1. All parties involved in a disciplinary matter shall ensure that the details remain confidential and are not shared with other staff or stakeholders such as service users or pupils' parents. The exception to this is where an employee subject to the disciplinary process may need to talk to other staff as part of producing a response to the allegations or talk to their work place colleague regarding the process. Where this is necessary, this must be done with discretion to ensure confidential information is only shared with relevant parties and the Investigating Officer must be notified.
- 6.2. The press and members of the public shall be excluded from any hearing arranged in accordance with this procedure. All parties involved in a disciplinary matter shall ensure that the details remain confidential except that any party shall have the right of reply if the other makes details public.
- 6.3. Any breach of confidentiality by any party could be a disciplinary matter in itself.

Disciplinary procedures

7. Investigation

- 7.1. A suite of resources to support managers in undertaking investigations and associated disciplinary procedures can be found in the disciplinary toolkit available on the intranet and the Webshop.
- 7.2. In recognition of both employee and management time and the unsettling nature these circumstances can have on all parties, it is important that the investigation process is concluded as quickly as possible. Should the employee be unable to attend an investigation meeting, it will be rescheduled once, normally no later than within 5 working days of the original date. Where the employee is unable to attend, the meeting may proceed in their absence though alternative options should be considered such as accepting a written statement from the employee.
- 7.3. The Investigating Officer will decide, based on the evidence they have compiled during the investigation, as to whether:
 - there is sufficient evidence to support the allegations and formal action should be taken;
 - formal disciplinary action is not appropriate and informal action is taken (e.g. standard setting);
 - there is not sufficient evidence to pursue disciplinary action (in which case a suspended employee would return to work as soon as possible).

8. Suspension

- 8.1. If the matter being investigated is serious the employee may be suspended by the Investigating Officer at any time during a disciplinary process. This will normally be done in consultation with Personnel and Training.
- 8.2. Suspension is a neutral act which in no way implies that the allegations are proven.
- 8.3. It should be used where it would be inappropriate for the employee to remain at work, where their presence may inhibit a proper investigation and/or when it is necessary to safeguard both the organisation and the employee from further allegations. Consideration should be given to alternatives to suspension, such as the employee working in a different role whilst the investigation takes place.
- 8.4. Suspension should be for as short a time as possible and should be kept under regular review.
- 8.5. The suspension will normally last until an investigation has been concluded or any disciplinary hearing is held. Where possible, the employee will be informed of their suspension in person. The employee will receive confirmation in writing including the reason(s) for the suspension.
- 8.6. Suspension will normally be on full pay (or average earnings calculated over a 13 week period where required). Employees who fall sick during the suspension will be subject to the [Attendance Management Policy and Procedure](#), and may be required to be examined by the County Council's Occupational Health Adviser/Physician. Their sickness will not necessarily lead to a delay of the disciplinary process.
- 8.7. During the period of suspension, the employee will be allocated an off-line manager who will facilitate communication between the employee and the County Council.

9. After the investigation has concluded

- 9.1. Whatever the findings of the investigation, a record of the process followed and the outcomes reached will be placed on the employee's file.
- 9.2. If the Investigating Officer determines that there is not sufficient evidence to support an allegation of misconduct, no further disciplinary action should be taken and if the employee was suspended they should return to work as soon as possible.
- 9.3. If the Investigating Officer decides there is sufficient evidence to support the allegations then they should consider one of the following three actions:
 - a) The misconduct is minor and informal action (e.g. standard setting) is sufficient.
 - b) Issue a written warning with agreement of the staff member.
 - c) The misconduct potentially warrants a disciplinary hearing.

Gross misconduct will always fit in the third category and if proven will normally result in dismissal without notice (see [Appendix 1](#) for a list of example actions that may be considered gross misconduct).

10. Disciplinary hearing

- 10.1. A model procedure for conducting a hearing can be found in the disciplinary toolkit available on the intranet and the Webshop.
- 10.2. The consideration for the chairperson is whether they believe the allegation(s) to be true 'on the balance of probability'. The term 'beyond a reasonable doubt' is a test applied in a criminal court and would not be considered at a disciplinary hearing.
- 10.3. Invitations and associated paperwork (such as a management statement of case) will normally be sent at least 10 working days before the hearing.
- 10.4. Any written response to the statement of case from the employee should be received at least 5 working days in advance of a hearing.
- 10.5. The outcome of the hearing will be confirmed in writing to the employee, normally within 5 working days. This outcome letter will give details of their right to appeal.
- 10.6. Where an employee indicates the date of the hearing is unsuitable, the following table gives indicative actions we will normally take:

Reason	Action
The employee's representative is unable to attend.	Reschedule for a date no more than 5 working days from the original date.
The employee is absent for sickness reasons.	Reschedule for a date no more than 1 month from the original date. If the employee remains absent, consideration will be given for the hearing to take place in their absence; a written submission would be permitted.

11. Possible formal sanctions

- 11.1. There is a range of sanctions available to the chairperson or, in some circumstances, the Investigating Officer. The list below gives some examples but is not exhaustive:
 - First written warning;
 - Intermediate written warning;
 - Final written warning;
 - Withdrawal of benefits such as flexi-time or internet access;
 - Demotion to a lower graded post (see 11.4);
 - Transfer to an alternative post;
 - Dismissal.
- 11.2. Written warnings remain live for a period of time after they are issued. During this time, they may be referred to in instances of continued/further misconduct and may be considered as part of redundancy selection criteria. After this time elapses, they will remain on the employee's file as part of their record of work history.
 - First written warnings will normally remain live for 12 months;
 - Intermediate written warnings will normally remain live for 12 months;
 - Final written warnings will normally remain live for 18 months.
- 11.3. Employees may be given the opportunity to accept a written warning at any level as an alternative to a hearing. If they decline this offer, a hearing will be convened.
- 11.4. Demotion to a lower graded post will normally only be confirmed with the agreement of the employee and this will normally be as an alternative to dismissal.

11.5. In accordance with the [Scheme of Personnel Delegations](#), managers at Assistant Director level or above have the authority to dismiss. In schools this will normally be the Headteacher. In cases of an employee's first breach of discipline, dismissal will normally only be used where the breach is deemed to be gross misconduct.

12. Referrals to other agencies

12.1. The County Council may be required to refer the outcomes of disciplinary procedures to the relevant professional body or other agency. A professional body may choose to make further enquiries and make a determination concerning the future of the individual in that profession. Other agencies, such as the police or those with safeguarding responsibilities, may also choose to undertake their own investigations.

12.2. It is the responsibility of the employee to understand and adhere to all ongoing registration processes and standards associated with their profession.

13. The right to appeal

13.1. An employee has the right to appeal against either a decision or a sanction given at a disciplinary hearing. The appeal must be submitted in writing within 10 working days of the original hearing and must specify what the appeal is against: the decision, the sanction or both. Full details setting out the grounds for appeal must be provided.

13.2. Whether all evidence is required to be reheard (including, for example, witness statements) will be decided on a case by case basis.

13.3. Appeals will normally be chaired by someone who was not party to the first hearing and is more senior (or equally senior) to the original chairperson. Appeals against dismissal will be heard by a panel comprising elected Members (or Governors in schools).

13.4. Having considered the appeal, the outcome will be:

- to uphold the original decision;
- to withdraw the original decision;
- to replace the original decision with an alternative;
- to reinstate or re-engage an employee who was dismissed.

13.5. Confirmation of the outcome of the appeal will be sent in writing to the employee, normally within 5 working days.

13.6. The decision at the end of the appeal is final.

Appendix 1 Examples of misconduct

Gross misconduct

The term 'gross misconduct' can be used to describe a situation where trust between the employer and employee has irrevocably broken down. The following list, although by no means exhaustive, provides some examples of gross misconduct, which may result in dismissal without notice:

- Assaults and/or Violence towards a fellow employee, service user or member of the public. This includes fighting, physical or serious verbal abuse.
- The development of any inappropriate relationship with a service user or pupil, including sexual approaches or responses, or any admitted offence or police caution relating to serious or sexual abuse of a service user or pupil.
- Corrupt practices, such as receipt of money or goods and accepting or offering bribes.
- Unauthorised or improper use of County Council materials, equipment or facilities, including computer systems and internet access.
- Any deliberate attempt to defraud the County Council, its employees or the public, including falsification of records, time sheets or expenses.
- Being untruthful and/or engaging in deception in matters of importance.
- Consuming or being under the influence of alcohol or any illegal substance at work.
- Negligent behaviour which seriously threatens the health and safety of a person or has the potential to cause unacceptable loss, damage or injury.
- Malicious damage to the property or the reputation of the County Council, clients, other employees or members of the public, including unauthorised disclosure of information.
- Discrimination, harassment or victimisation which is contradictory to the Equality Act 2010.
- Engaging in politically restricted activities when holding a politically restricted post.
- Conduct which brings, or has the potential to bring, the County Council into disrepute, including criminal offences which make the employee unsuitable for continued employment with the County Council.
- Theft or dishonesty, including unauthorised or unlawful possession of property (including intellectual) belonging to the County Council, clients or the public.
- Repeated acts of misconduct.

Other misconduct

The following non-exhaustive list shows examples of other misconduct that could lead to formal disciplinary warnings:

- Unsatisfactory timekeeping;
- Breaches of confidentiality (deliberate or negligent breaches may be gross misconduct);
- Failure to comply with reasonable work related requirements or management instructions or lack of care in fulfilling the duties of the post;
- Acting in a manner that could reasonably be regarded as rude, impolite or contemptuous (behaviour which causes offence may be gross misconduct);
- Conduct that adversely affects either the reputation of the County Council or confidence in the employee.