

**BRISTOL CITY COUNCIL**  
**HUMAN RESOURCES COMMITTEE**

**For Resolution**

**20<sup>th</sup> January 2011**

**Report of:** Service Director: Strategic HR & Workforce Strategy

**Title:** Revisions to the Disciplinary Procedure

**Officer Presenting Report:** Mark Williams, Corporate HR Manager

**Contact Telephone Number:** 0117 922 4838

**RECOMMENDATION**

The Committee is asked to approve the revised Disciplinary Procedure as set out in Appendix A and also to consider the options set out in paragraphs 4.2 and 4.3 below:-

- Option 1 - the discontinuation of Member level appeals against dismissal, or
- Option 2 - the continuation of existing appeal arrangements

The date of implementation is 1st May 2011.

The revised Procedure does not apply to schools.

**Summary**

The revisions are part of a planned programme of work to review all key HR policies to ensure that they are accessible and easy to use.

There is a need to provide an effective framework to ensure appropriate conduct at work, which emphasises the importance of dealing with issues at an early stage, both formally and informally. Feedback from managers and employees also suggests it is necessary to simplify the process, language, and to avoid delays wherever possible.

In this context, this report reviews the Disciplinary Procedure's appeal mechanism, which currently embraces appeals conducted by officers for disciplinary warnings, and Member level appeals for dismissal.

Appeals against dismissal or disciplinary warnings which relate to hearings held before 1<sup>st</sup> May 2011, will be heard under the current Disciplinary Procedure.

**The significant issues in the report are:**

As set out in paragraphs 4.1 to 4.4

## **1. Policy**

- 1.1 The key differences between the existing policy, and the revised versions, are as summarised in paragraph 4 below.

## **2. Consultation**

### **2.1 Internal**

The Policy has been the subject of consultation with the Strategic Leadership Team who support the introduction of the new simpler policy, and are seeking a change in the current arrangements for hearing appeals against dismissal .

Trade Union consultation took place on 19 November 2010 and 3 December 2010. A number of changes to the procedure and guidance have been discussed with the trade unions and some of these are reflected in the new policy. Trade Unions do not agree with the proposal to discontinue member appeals in relation to dismissals, as recommended by SLT.

Informal consultation has taken place with managers, HR colleagues, Legal colleagues and representatives from the Equalities Team.

Consultation has also taken place with the Self Organised Groups.

### **2.2 External**

Not applicable.

### 3. Context

- 3.1 Evidence from HR, managers and employees indicate that the current Disciplinary Procedure requires simplification to the the process and language. The Disciplinary Procedure has been streamlined with some detail moved across into the Guidance FAQs, attached in Appendix B.
- 3.2 There is also evidence that conduct issues may sometimes progress unnecessarily to the formal stage including the commissioning of a full, formal investigation which can be both costly and time consuming. In all cases it is preferable to tackle conduct issues from the outset and clarify and confirm the council's expectations with the employee. In cases where informal action is not sufficient a full independent, formal investigation may still be required.
- 3.3 In considering changes to the dismissal appeals arrangements, Strategic HR has conducted a survey of other local authorities. The results, which are summarised in Appendix D attached, show that the majority of the councils currently operate Member level dismissal appeals.
- 3.4 Clarification has also been included in the procedure regarding the attendance of witnesses, and the protocol around adjournments during appeal hearings. These are as set out in paragraph 8.7 of the Disciplinary Policy (attached).

### 4. Proposal

The key amendments are:

- 4.1 Revisions to the procedure which:-
  - (i) give greater emphasis on addressing conduct issues from the outset.
  - (ii) require less dependence, where appropriate, on large scale, formal investigations.
- 4.2 With regard to appeals against dismissal, SLT consider that appeals should no-longer be undertaken by elected Members. They therefore favoured **Option 1**. In addition, SLT wanted a strengthening of the wording of the Disciplinary Procedure along the lines of disciplinary action must be applied fairly and consistently in accordance with the Council's equalities policies and principles. To support this, SLT's

views were that the emphasis will remain on the provision of equalities awareness training.

- 4.3 As stated above however, the trade unions oppose this proposal and support **Option 2**.
- 4.4 Given the above, the Committee is asked to consider either:
  - i) Option 1: the proposed discontinuation of Elected Member involvement at dismissal appeals. The revised arrangements would require a Strategic Director to hear appeals against dismissals, who will be advised by a HR Adviser from Strategic HR, and a Legal Adviser or:
  - ii) Option 2: the continuation of the existing appeal arrangements, to be conducted by elected Members for dismissal hearings, and by officers for appeals against disciplinary warnings.
- 4.5 In considering the above “options” it should be noted that the majority of other Councils whose views have been sought as part of the “benchmarking” exercise, have retained a Member level process for considering appeals against dismissal (Appendix D refers).

## **5. Other Options Considered**

- 5.1 None at this stage.

## **6. Risk Assessment**

- 6.1 There may be opposition to the proposed changes from the Trade Unions. However, the proposals are designed to simplify the disciplinary process, and reduce the disproportionate impact of the procedure on under represented groups.
- 6.2 The proposed mitigation is set out in Appendix C attached. It is proposed that the equalities monitoring data will be produced by HR STS, and improved management training by the Organisational Learning and Development Team.

## **7. Equalities Impact Assessment**

- 7.1 The EIA in Appendix C states the number of disciplinary cases that have been recorded on the Council's HR management information

system. Data collection has only recently started, and relates to 7 equalities monitoring categories in this format. Therefore no long term trend can be identified. However the analysis of this current management information has revealed a disproportionate representation of some protected groups in disciplinary cases, as set out in Appendix C.

The Disciplinary Procedure, as a consequence, has been revised to:

i) make it easier to understand and operate, to put a greater emphasis on addressing conduct issues from the outset and to encourage managers to consider what level of investigation is most appropriate whilst at the same time ensuring employees are dealt with in a fair and equitable manner.

ii) consider the option of discontinuing elected member involvement in appeals against dismissal.

iii) help address the disproportionate representation of some equalities groups in disciplinary cases. Equalities data will be reviewed on a biannual basis in the future to assess the impact of the revised Procedure.

7.2 For further information regarding the above, please refer to Appendix C, paragraphs 1.8 and 1.9.

## **Legal and Resource Implications**

### **Legal**

This Report details changes to the Disciplinary Procedure. The amendments to the Policy have been undertaken in accordance with legal advice. The Procedure reflects the requirements of the ACAS Code of Practice on Discipline and Grievance.

(Advice from Husinara Jones for Head of Legal Services)

### **Financial**

#### **(a) Revenue:**

There are no direct financial implications arising from this report the purpose of which is to replace the existing Disciplinary Procedure with

a new simpler version.

(Advice from Stephen Skinner, Finance Business Partner Corporate Services and Deputy Chief Executive's Directorates)

**(b) Capital:**

Not applicable.

**Land**

Not applicable.

**Personnel**

As set out in paragraph 4.1 to 4.4 and in Appendix A.

**Appendices**

Appendix A - Revised Disciplinary Procedure

Appendix B - Guidance for Managers re the Disciplinary Procedure

Appendix C - Equalities Impact Assessment

Appendix D - Relevant Benchmarking Data

Appendix E - A Summary of the Number and Outcomes of Disciplinary Member Appeals

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**Background Papers:**

None.



# DISCIPLINARY PROCEDURE

**Correct at: April 2011**

**Author & Owner: Employee Relations**

**Contact: [Shared Transactional Service](#)**

**Tel: 0117 35 21400**

**Date Adopted:**

**History of most recent Policy Changes – Must be completed**

<b>Date</b>	<b>Page</b>	<b>Change</b>	<b>Origin of Change (e.g. TU request, change in legislation etc)</b>
25 May 2009	8	Ss 6.4 wording changed to clarify the point regarding witnesses	Feedback received
April 2011		Policy re-write greater emphasis on informal stage, streamlining policy, appeals stage	Feedback received

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## 1. Principles

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- 1.1 The Disciplinary Procedure supports the city council's standards and rules (including the Code of Conduct) and aims to ensure consistent and fair treatment for all. It should not be used to deal with problems associated with unsatisfactory performance.
- 1.2 The procedure applies to all employees except:
  - those who work in schools, for whom there are separate arrangements;
  - those who are in their probationary period, although disciplinary issues relating to such employees must be handled in a fair and equitable manner;
  - JNC 1<sup>st</sup> and 2<sup>nd</sup> tier officers (including the Chief Executive), for whom a separate council Disciplinary Procedure (linked to their national conditions of service) applies
  - casual workers
  - agency workers
- 1.3 Managers are responsible for informing staff what the council's standards of behaviour are, enforcing these expectations and making sure breaches are tackled promptly.
- 1.4 Employees who abuse this or any other procedure by making malicious or frivolous allegations may themselves face disciplinary action.
- 1.5 This Procedure complies with the ACAS guidance .

## 2. Initial Process

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- 2.1 When a potential misconduct issue arises the manager should collate the facts and take appropriate action.
  - If the issue does not require formal action the manager should discuss the issue/s with the employee, and advise them of the possible implications if there is a further repeat of the misconduct. This should then be confirmed in writing,  
  
If the matter is considered to be too serious to warrant informal action, the manager will need to give it further consideration.
  - In many cases this may be a straightforward matter of the manager collating the evidence and moving directly to a disciplinary hearing, for example, the facts may be undisputed or the documentary evidence is clear;
  - In other cases it will be necessary to undertake a formal investigation under the Code of Practice on the Conduct of Investigations. Refer to STS HR for advice.  
  
*Insert link to COPCOI*
- 2.2 In cases of minor breaches of the Code of Conduct managers will be able to carry out the investigation and the disciplinary hearing. In cases concerning more serious

allegations the investigation and hearing should be carried out by independent managers. If the initial information received or the complaint against an employee involves potential gross misconduct or is complex then an independent investigation will need to be commissioned.

- 2.3 In cases where employees are found to have criminal offences, albeit unrelated to their job, the manager will need to review the situation and consider if there is a potential breach of contract. Advice should be sought from STS HR.

### **3. Cases concerning the safeguarding of children and vulnerable adults or financial irregularities**

- 3.1 Any allegation against an employee concerning safeguarding must be referred to the designated senior manager in the directorate before any investigation takes place under this procedure. In respect of financial irregularities, the Chief Internal Auditor must be informed before any investigation is commenced

### **4. Suspension**

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- 4.1 Normally, a manager should only suspend an employee if there is sufficient evidence to suggest that they may be guilty of gross misconduct or if the employee's presence at work could hinder the investigation. Advice should be sought from STS HR and authorisation must be obtained from the Strategic Director. Other options should be considered if appropriate.. For further information INSERT LINK.
- 4.2 During the period of suspension the employee will receive their normal pay and must be available to attend any hearings or meetings as required.
- 4.3 At frequent intervals, the manager and the HR Business Partner must review whether an employee should stay suspended. Any suspension, which extends beyond four working weeks, must be reported to the Strategic Director with details of how the investigation is progressing and when it is likely to end. Any suspension, which continues for longer than three months, must be reported to the relevant Executive Member.

### **5. Disciplinary Hearing**

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- 5.1 Where any issues to be considered fall under the Disciplinary Policy and another policy (e.g. SOSR, Improving Performance Policy), one hearing can be convened to hear all issues where appropriate. However, any sanction(s) should be in line with the appropriate policy(s).
- 5.2 If the employee concerned is a trade union representative or officer, the manager should inform the full-time trade union officer prior to commencement of this procedure, after obtaining the employee's agreement.
- 5.3 If the manager concludes that there is a case to answer at a disciplinary hearing, they should ensure that:

- the employee be notified in writing that a hearing will take place
- seek advice from STS HR and refer to the Guidance for information on the conduct of disciplinary hearings
- at a disciplinary hearing which may result in dismissal, ensure there is a separate note taker present.
- advise employees of their right to be represented or accompanied by a trade union representative or work colleague at any disciplinary/appeal hearings. The employee is responsible for making these arrangements.

5.4 It is in nobody's interest to delay the process and meetings should not be unreasonably postponed. If an employee is unwilling or unable to attend the meeting, despite being offered an alternative date within 5 days of the original date, they may be represented at the meeting by a trade union representative/colleague in their absence and/or may make written submission to the meeting. The manager will take a decision on the evidence available.

5.5 Where a specific trade union representative is not available, the employee is expected to arrange with their trade union to bring another trade union representative.

## 6. Result of Hearing - Disciplinary Action

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6.1 No employee will be dismissed for his or her first breach of discipline, unless it is a case of gross misconduct.

6.2 If, following an investigation and disciplinary hearing, the disciplining manager concludes that disciplinary action is required, the following options are available:

- **Level 1: Recorded warning**
- **Level 2: Written warning**
- **Level 3: Final written warning**
- **Level 4: Dismissal**

Refer to the Guidance for further information on the level of sanction to apply and further detail on the application of Level 4.

6.3 In all cases the manager must give the employee written confirmation of the outcome of the hearing even if no sanction given (refer to the Guidance on what should be included in the letter).

## 7. Time limits for warnings

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7.1 Unless there are exceptional circumstances, disciplinary warnings will be disregarded for disciplinary purposes once the following periods of time have elapsed since the warning was given:

- Recorded warnings - 6 months
- Written warnings - 1 year
- Final written warnings - normally 1 year or such other time as is considered appropriate - refer to guidance for further information

Refer to the Guidance for information on the retention of associated documentation.

## 8. Appeals

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- 8.1 An appeal is not a re-hearing of the disciplinary hearing, but a review of the decision made by the disciplining manager and/or to consider whether the procedure has been followed correctly
- 8.2 An employee who wishes to appeal against a disciplinary decision should inform the directorate's designated officer (as specified in the formal notification of the decision) within five working days of written notification. The employee must explain the grounds for the appeal, specifying whether it relates to the facts of the matter, the level of sanction imposed or the way the procedure was followed.
- 8.3 An appeal against a disciplinary warning will be heard by a manager more senior than the disciplining officer who has had no previous involvement in the case and will normally be heard as soon as possible.
- 8.4 For appeals relating to 1<sup>st</sup> and 2<sup>nd</sup> tier officers please refer to the Disciplinary Procedure for 1<sup>st</sup> and 2<sup>nd</sup> Tier Officers.
- 8.5 An employee must be informed in writing that he/she may appeal against dismissal from the council's employment by writing to the Democratic Support Team within 5 working days of written notification of the decision to dismiss. The employee should state the reasons for his/her appeal.
- 8.6 For appeals against dismissal, the process is subject to the HR Committee's choice of "options", and is either:-

### Option 1

The appeal will be heard by a Service Director who will be advised by officers from Legal Services and HR (Strategic). In all other cases an HR Advisor (STS) will advise.

### Option 2

The (member level) Appeals Committee will hear the appeal which will be carried out in accordance with the city council's agreed procedure.

- 8.7 Witness will only attend to give their evidence unless agreed by all parties. If the parties cannot reach agreement, witnesses will leave after giving their evidence. The Council or the appellant/appellant's representative can request an adjournment at any time during the hearing. This request will be for the Appeal Committee to determine.

8.8 The outcomes open to the manager/panel are to:

- uphold the appeal;
- reject the appeal in full;
- reject the appeal in part and impose a lower level of warning;

and in cases of dismissal, there is a further option:

- reject the appeal and ask the employee's manager to reconsider the option of offering alternative employment on the basis that if the employee rejects the offer of redeployment, the dismissal stands.

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## **Guidance on the Disciplinary Procedure Frequently Asked Questions**

### **THE DISCIPLINARY PROCEDURE**

#### **What are my responsibilities as a manager under the Disciplinary Procedure?**

You are responsible for informing staff what the council's standards of behaviour are, enforcing these expectations and making sure breaches are tackled promptly and in accordance with the Disciplinary Procedure. You can access a copy of the Disciplinary [Procedure](#) on the HR Self-Service Section of the Knowledge Base on the Source.

#### **Who does this procedure apply to?**

The procedure applies to all employees, including centrally employed teachers, and excludes those detailed in 1.2 of the Disciplinary Procedure.

#### **A conduct issue has come to my attention, what do I need to consider?**

You need to review the facts of the case and consider whether the matter should be dealt with on an informal or formal basis. You can establish this by informally questioning employees and/or considering relevant documentation. Be careful that this does not turn into a formal investigation, as things such as having the right to trade union accompaniment would then come into play.

You should consider if there are any underlying equalities issues or whether there are underlying medical conditions.

You also need to consider whether this situation is definitely one of misconduct, or could it be due to an individual's performance? If it is an issue of performance, the improving performance procedure will be more appropriate. However, you may need an investigation before this can be clarified.

You may wish to take advice from STS HR contact centre when making your decision.

#### **How do I differentiate between disciplinary and performance issues?**

The Disciplinary Procedure should be used to deal with conduct issues such as dishonesty, lateness, refusal to follow management instructions or failure to comply with procedures, policies and regulations - refer also to the Employee Code of Conduct. Examples of performance issues include the employee not being able to undertake the duties and responsibilities to the required standard, not achieving the objectives agreed with their manager

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and/or not fulfilling the requirements of the Bristol Manager/Employee Competency Framework.

**Is there anyone I need to notify?**

In accordance with Financial Regulations the Chief Internal Auditor must be notified of any allegations or indications of any financial irregularities. In accordance with the Council's Anti Fraud and Anti Corruption Strategy and the Fraud Response Plan, he/she will undertake all such investigations as are considered necessary, including notifying and liaising with the police where criminal offences are suspected. The results of the Audit investigations will form part of any action taken under this Disciplinary Procedure.

**What should I do if I decide to deal with the matter on a informal basis?**

You should discuss the issue/s with the employee, advise them of the possible implications (for example that you may have to deal with it through the formal disciplinary route should it re-occur), clarify your expectations of what is expected of them and confirm this in writing. A copy of this should be sent to STS HR Employee Life Cycle to go on the employee's file.

**What should I do if it is necessary to deal with the conduct issue on a more formal basis?**

You will need to gather further information in order to pursue the matter. In some cases this may simply be a matter of gathering the relevant information, compiling a brief management report and moving to a disciplinary hearing, for example where the facts are undisputed or the evidence is clear.

**What if the allegations are of a very serious nature and /or the issues are complex?**

You are advised to seek advice from STS HR to determine whether a independent formal investigation is required.

**What support is available to me?**

You can seek advice from Human Resources in Shared Transactional Services. You will be allocated an HR Adviser who will guide you through the process and provide support at each stage. This will include discussing the next steps, helping you access standard letters and where appropriate can attend meetings.

**INVESTIGATION**

Please see [code of practice for the conduct of investigations](#).

**Who carries out the investigation?**

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- \* If initial information does not suggest either potential gross misconduct or more serious allegations falling short of gross misconduct, you may act both as investigating officer and disciplining officer if a disciplinary hearing is held. However, if this approach is taken the sanctions are limited to a level 1 or level 2 warning.
- \* If there are serious allegations the investigating officer should not also act as disciplining officer. If you consider that you may have to act as disciplining officer, you must appoint someone else to undertake the investigation.
- \* If you have undertaken an investigation and it becomes clear to the allegations are more serious than appeared, someone else should be appointed to take the disciplinary hearing.

**What do I need to do in relation to investigation?**

You should refer to the Code of Practice on Investigations for all formal investigations. Key points to remember include:

- giving employees five working days written notice of an investigation meeting
- advise them of the issues to be investigated
- inform them of their right to be accompanied by a trade union representative or work colleague.
- to either enclose a copy of the Disciplinary Procedure and the Code of Practice of Investigations or refer them to the Source where they can obtain copies of them
- witnesses are also entitled to five working days notice, and have the right to be accompanied.

**What should I do if the employee is off sick?**

You can seek advice from occupational health as to whether they are well enough to attend a meeting, it may be that this can be ascertained through a phone call with the doctor or nurse. In most cases it is in the employee's best interests to progress the matter without undue delays. If they are not well enough to attend you should explore with the employee when they may be well enough or whether it is more appropriate for them to make a written submission or for a TU representative to act on their behalf. You should consider offering counselling support to the employee and refer to the OH Counselling Service, if needed by the employee.

**What should I do if an employee not attend a meeting?**

You should offer them a further meeting. If after being offered other dates for this meeting, they cannot attend, they should be advised that the meeting will be held in their absence and that they can either submit their case in writing or use a proxy.



*DRAFT – April 2011***What are the timescales for investigations?**

If the matter will not be concluded within a reasonable time scale, you should notify all relevant parties of the situation. You should keep all relevant parties updated at reasonable intervals.

**SUSPENSIONS****In what circumstances would an employee be suspended?**

Suspension may be required in cases of potential gross misconduct or if the employee's presence at work may hinder the investigation - refer to section below on handling gross misconduct. It may not always be necessary to suspend and you should consider alternative actions to suspension. For example you could consider moving the employee to an area where they are not undertaking the duties involved in the investigation or an employee facing allegations of wrongfully accessing the internet may have their internet access withdrawn. Advice should be sought from STS HR.

**Who can authorise suspensions?**

You should bring this to the attention of your chief officer or relevant service director. Officers with the authority to suspend are Strategic Leaders and their designated officers.

**I will have to suspend an employee, what do I need to do?**

You need to:

- make sure the employee is fully informed of the reason/s for suspension and confirm this in the suspension letter together with the name of a manager to contact while they are suspended. There is a standard letter to assist you.
- must make it clear that suspension is not a disciplinary penalty and that it will not prejudice any future disciplinary hearing.
- if they are informed of this in work and are sent home, ensure they are fit to travel home alone.
- let them know what the appropriate procedure is and their related rights, the likely timescales and possible outcomes
- contact them regularly to inform them of progress of the investigation and the reasons for any delays. This can also be used as an opportunity to check how they are
- consider whether it is appropriate to offer them a referral for counselling and if they initially refuse it, whether it is appropriate to offer it again in a few weeks if the suspension continues

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- if the police have been involved and decide there is no case to answer prior to us completing our procedures, ensure they are told that the police are no longer involved

- consider the appropriate information to give their colleagues, clients and service users

**What if the person concerned is a casual or agency worker or an employee on probation?**

You should check the employment status of the employee and ensure you do not suspend casual workers, agency workers or employees on probation. If an employee is on probation you use the Probationary Procedure. The relevant agency should be contacted regarding any conduct issues relating to an agency worker. Contact STS HR for further advice regarding casual workers.

**What do I need to consider when arranging meetings?**

Employees who are suspended must be available to attend any hearings or meetings as required, however managers need to take into consideration any pre-booked annual leave and also the employee's normal working hours/days if they are part-time.

**What if the investigation is likely to take some time?**

At frequent intervals, the manager and the HR Business Partner must review whether an employee should stay suspended. Any suspension, which extends beyond four working weeks, must be reported to the Strategic Director with details of how the investigation is progressing and when it is likely to end. Any suspension, which continues for longer than three months, must be reported to the relevant Executive Member.

**What steps do I need to take when an employee returns to work after a period of suspension?**

Suspension can lead to feelings of shock and isolation. The way a manager organises an employee's return to work following suspension is crucial in reducing their recovery time. When a suspended employee returns to work managers should:

- Discuss with them what the team has been / is to be told
- Inform the team
- Ensure that actions recommended by the panel and agreed by the manager have been carried out

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- If it has been a long suspension, it may be helpful for the employee to meet with the manager prior to their return.
- Bring them up to date on any developments in their work area and any progress made on workload / case work they were engaged on before they were suspended
- Bear in mind that the initial days / weeks may be difficult for the employee and make due allowances

## **TRADE UNIONS**

### **Will the trade unions become involved?**

The employee has the right to be supported by their trade union representative or a work colleague at formal meetings. All employees should be encouraged to seek support from their trade union.

### **I keep trying to arrange to meet with the employee but their trade union representative is unavailable?**

It is in nobody's interest to delay the process and meetings should not be unreasonably postponed and, if rearranged, should be within 5 days of the original hearing. Wherever possible try and arrange the meeting taking account of the availability of the trade union representative.

Where the trade union representative is not available, then the employee is expected to arrange with their trade union to bring another representative.

## **HEARING**

### **I need to organise a disciplinary hearing - what do I need to do?**

Where possible you should seek to agree a time, date and venue beforehand. You must send a letter to the employee giving them at least 5 working days' notice of the hearing. The following information should be included in the letter:

- the date and time of the hearing;
- details of the allegations;
- the fact that the employee will have the opportunity to state their case and question any witnesses;
- the fact that the employee will have the right to invite a trade union representative or work colleague to represent them;

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- any previous warnings that could be taken into account when deciding the level of any disciplinary action;
- the fact that, depending on its findings, the hearing could result in disciplinary action and (adding where appropriate) that this could include dismissal.
- a copy of the investigation report and statements where appropriate.

**What if there are other issues to be considered?**

Where any issues to be considered fall under the Disciplinary Policy and another policy (e.g. SOSR, Improving Performance Policy), one hearing can be convened to hear all issues where appropriate. However, any sanction(s) should be in line with the appropriate policy(s). You should seek advice from STS HR.

**What do I do if the employee requests that the meeting be postponed?**

A new date should be arranged which is mutually acceptable to all involved, provided the new date falls within five working days of the original date. If the employee is still unable to attend, you should advise them that the hearing will be heard in their absence and that they can make a written submission or be represented by TU representative or colleague in their absence. In complex cases where there are substantial amounts of paperwork, requests for an extension should not be unreasonably refused.

**The employee has requested to call witnesses, what do I need to tell them?**

Witnesses who are council employees are allowed to have time off to attend, they should advise their line manager as soon as possible so that appropriate time off for them can be arranged. You may be required to confirm arrangements to the line manager in order for time off to be authorised.

**What should I do if the employee wishes to call a large number of witnesses?**

You should consider the relevance of the witnesses to the case. You should also determine whether some will giving the same evidence as others. You can seek further advice from STS HR.

**What are the attendance arrangements for witnesses?**

Witnesses will only attend to give their evidence unless agreed by all parties. If the parties cannot reach agreement, witnesses will leave after giving their evidence.

**How should I prepare for the hearing?**

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- Choose an appropriate time and place. Think about when and where to have the meeting. It should be conducted in private, where there will be no interruptions. Make sure that you have set aside sufficient time.
- Consider arranging to have a note-taker – this should be someone who is not involved in the issue.
- Consider whether any reasonable adjustments are necessary.
- Listen to the employee(s) and clarify understanding.
- Avoid making assumptions and appearing judgemental.
- Consider adjournments.
- Sum up the main points.
- Use appropriate questioning techniques – open questions first and then probing and reflective questions.

**Do I need to keep a record of the hearing?**

Notes should be made of the hearing. It is mandatory to have a note taker present at potential dismissal hearings as these notes are necessary at any appeal where a review of the decision will take place.

These are management notes and there is no expectation that they will be agreed. It may be helpful to share them following the hearing and deal with any issues arising. The notes will be made available at any subsequent appeal hearing. However, in certain circumstances some information may be withheld, for example to protect a witness.

**What do I need to consider when making a decision?**

There must be sufficient evidence that misconduct has occurred. This will be based on the balance of probability, not beyond reasonable doubt. You will also need to take into account any mitigation put forward. It is important that you ensure you have all the information necessary to make your decision particularly in cases of potential dismissal. In certain cases, you may request further information (if easily available), or for further investigation to be carried out or more thorough questioning of the investigating officers may be necessary.

**LEVEL AND TIME LIMITS FOR WARNINGS**

**If there is sufficient evidence what formal action can I take?**

If disciplinary action is warranted, formal action available is:

- Level 1 - recorded warning
- Level 2 - written warning
- Level 3 - final written warning
- Level 4 - dismissal.

If dismissal is considered, alternatives to dismissal should also be considered.

**What sort of circumstances would certain levels of warnings apply?**

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It is not possible to provide a list of offences with "off-the-shelf" levels of warnings, which will apply in all cases. The level is very much dependent on:

- What misconduct took place
- What is acceptable behaviour
- Mitigating circumstances
- Current warnings live on file.

**Level 1 Recorded warning**

May be issued for minor breaches of discipline, or when supervision and counselling have failed to achieve a required improvement. Any minor deviation from the standard of behaviour which is either stated or implied in the rules applicable to a specific workplace should first be dealt with at this relatively low-key meeting e.g. persistent lateness, lengthy unexplained absences from the workstation during the day or shift etc.

**Level 2 Written warning**

A level 2 warning is usually issued when an individual's behaviour does not improve. It may be appropriate for a first offence, or where the misdemeanour is quite serious.

**Level 3 Final written warning**

May be issued for serious misconduct or in cases of misconduct if the employee has a current warning. A level 3 warning is usually issued in serious cases, including those which are borderline dismissible offences but where mitigating circumstances make dismissal too harsh.

**Stage 4 Dismissal**

May result for cases of misconduct where the employee has a current warning (final written, in the majority of cases) or in instances of gross misconduct.

**What options are there when considering dismissal (level 4)?**

There a number of ways of applying a level 4 sanction dependant on the circumstances of the case - these are outlined below.

**Gross misconduct**

If, following an investigation and disciplinary hearing, the disciplining manager is satisfied that an employee is guilty of gross misconduct, the employee will be dismissed without notice or pay in lieu of notice. (NB a dismissing manager must have prior delegated authority from a Service Director to dismiss.)

**Other cases of dismissal**

If, while a final written warning is still in force, the employee's conduct is still unsatisfactory, as determined by a subsequent investigation and disciplinary hearing, the disciplining manager will normally dismiss the employee. The employee will receive full pay during the notice period.

In both cases as soon as is reasonably possible, the manager will confirm the dismissal in writing, giving the date on which the person's employment ends

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and explaining the reasons for the dismissal and the employee's right of appeal.

**Dismissal and re-engagement**

In certain cases and if appropriate, the disciplining manager may dismiss an employee on either of the above grounds and offer to re-employ them in a different job. The alternative post should be identified when the employee is told the outcome of the disciplinary hearing and this may require the proceedings to be adjourned. The alternative post may mean demotion to a lower grade. No pay protection will apply. A final written warning will form part of such a disciplinary decision.

Employees will have the right to appeal against the dismissal. If they are offered re-engagement into an alternative post, they will be expected to move into the post even if they are appealing against their dismissal. If the appeal is upheld, they will return to their substantive job.

If they don't take the alternative post it will not be held open for them. In these cases, if their appeal is upheld they will return to their substantive job. If the appeal is rejected the dismissal stands.

**What are the time limits for the different level warnings?**

Level 1 Recorded warnings - 6 months  
Level 2 Written warnings - 1 year  
Level 3 Final written warning - usually 1 year

**Can I vary the time limit of a final written warning?**

Depending upon the nature of the misconduct, service managers may impose a final written warning that will remain in force for a period of greater than 1 year. In this event the employee must be told at the outset and in writing how long the warning will remain in force and the reason for the longer time period. In exceptional circumstances (e.g. abuse against children and vulnerable adults), the written warning may be extended for as long as the employee concerned is employed in his/her current job or a similar job. If an employee considers that the extended time period is unreasonable, he/she may appeal to the service director or designated senior manager.

**HANDLING GROSS MISCONDUCT**

**What conduct issues are considered to be potential gross misconduct?**

Gross misconduct is generally defined as misconduct serious enough to destroy the employment contract between the employer and the employee and to make any further working relationship and trust impossible. Some of the offences, which may be regarded as gross misconduct, are:

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- theft, unauthorised use or removal of the council's, a service user's, a client's or a fellow employee's property
- falsification of time-sheets, expenses claims or other records
- fighting or physical assault
- sexual or racial harassment
- harassment or discrimination on the grounds of race, gender, sexuality, disability, age or religious belief
- deliberate damage to council or a fellow employee's property
- inability to carry out normal work through being under the influence of alcohol or other drugs (medically prescribed drugs may be an exception)
- deliberate disregard for safety rules
- serious negligence causing unacceptable loss, damage or injury
- a serious breach of the Code of Conduct
- misuse of an employee's official position for personal gain, or for the inappropriate benefit of a friend, colleague or member of the employee's family
- failure to comply with a reasonable management instruction, despite being warned of the consequences
- abuse of a service user
- non-disclosure of criminal convictions, cautions, and bans e.g. from driving that have occurred during the employees employment with the council

**AFTER THE HEARING**

**I need to write to the employee confirming the outcome of the hearing - what do I need to include?**

You need to include the following in the letter:

- the reason for the warning;
- whether it is a recorded, written or final warning;
- the employee's right of appeal and to whom they appeal;



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- the fact that a note will be kept on their personal file indicating that a warning has been given, the reasons for it and any required improvements in conduct which have been specified;
- the fact that further misconduct may lead to further disciplinary action which could (adding where appropriate) include dismissal;
- the fact that the warning will be disregarded for further disciplinary purposes after the expiry of the time period.

## **APPEALS**

### **Who hears the appeal?**

Employees have the right to appeal against formal action issued under the disciplinary procedure.

#### **Option 1**

The appeal will be heard by an officer more senior than the disciplining officer. In cases of dismissal it will be heard by a Service Director who will be advised by an officer from Legal Services and by an HR advisor in all other cases.

#### **Option 2**

In cases of dismissal an employee must be informed in writing that he/she may appeal against dismissal from the council's employment by writing to the Democratic Support Team within 5 working days of written notification of the decision to dismiss. The employee should state the reasons for his/her appeal. The Appeals Committee will hear the appeal which will be carried out in accordance with the city council's agreed procedure.

### **What will happen at the appeal?**

The purpose of the appeal will be for the Panel to:

- Review the reasonableness of the original decision and, if necessary, determine an alternative outcome (if the original decision is unreasonable and/or it would resolve the grievance).
- Consider whether the procedure has been followed correctly.

### **How do I prepare for the appeal?**

You will need to prepare the management case for submission at the appeal. This includes the preparation of the paperwork (bundle) that you will refer to in the hearing, copies of which should be supplied to the appellant in advance of the hearing.

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It is important that all parties are aware of any new documentation referred to during the disciplinary hearing and that will be used in the appeal. This should be noted and added to the bundle.

**What do I need to do about the attendance of management witnesses and use of statements?**

You should ensure that all witnesses who attend have a statement which is provided in advance together with the rest of bundle. Where management witnesses have provided statements for the appeal but are not attending, the appellant should be notified.

Witnesses will only attend to give their evidence unless agreed by all parties. If the parties cannot reach agreement, witnesses will leave after giving their evidence.

**What are the possible outcomes of the appeal?**

The appeal panel may decide to

- uphold the decision
- overturn the original decision
- impose a lesser sanction
- dismiss and re-engage

The appeal decisions and reasons for reaching it should be confirmed in writing to the employee.

**RETENTION OF DOCUMENTATION**

**How long should I keep the documentation?**

Where disciplinary action relates to abuse against children, vulnerable adults, breaches of financial regulations or issues which relate to racial, sexual or disability discrimination, the relevant documentation should be retained on the employee's personal file for as long as he/she remains in his/her existing (or similar) post. Such documentation will not, however, form part of any subsequent disciplinary action if it is time-expired.

In all other disciplinary actions, the relevant documentation will be kept on the file for the duration of the warning. On no account should it be destroyed before a potential appeal is heard. When the warning has expired all documentation should be destroyed with the exception of the letter to the employee, which confirms the outcome of the disciplinary hearing. This letter will not, however, form part of any subsequent disciplinary action if it is time-expired. This does not apply to non-formal documentation such as written management instructions which can be kept on file.

**BRISTOL CITY COUNCIL**  
**Equality Impact Assessment – Part One - Screening**

Part one of an EqlA – the screening – should be carried out at the planning and development stage of a policy, project, service, contract or strategy. This form should be used in conjunction with the guidance and as the first part of a full EqlA.

<b>Name of policy, project, service, contract or strategy being assessed</b>	Disciplinary Procedure and Guidance
<b>Directorate and Service</b>	Resources, Strategic HR
<b>Names and roles of officers completing the assessment</b>	Adrienne Lintzgy, Jenny Perry, Jo McDonald
<b>Main contact telephone number</b>	0117 9036387
<b>Date</b>	1/10/10

# 1. Identify the aims of the policy, project, service, contract or strategy and how it is implemented

	Key Questions	Notes / Answers	Any actions needed? By whom?
1.1	Is this a new policy, project, service, contract or strategy or a review of an existing one?	Review of an existing policy	
1.2	What is the main purpose of the policy, project, service, contract or strategy?	To provide an effective way of addressing conduct issues	
1.3	What are the main activities of the policy, project, service, contract or strategy?	To comply with employment law, ACAS guidance and good practice. To ensure appropriate conduct at work.	
1.4	Who are the main beneficiaries? Whose needs is it designed to meet?	BCC managers and staff	
1.5	Which staff carry out the policy, project, service, contract or strategy?	Managers with HR support	
1.6	Are there areas of the policy or function that could be governed by an officer's judgement? eg. home visits "where appropriate". If so, is there guidance on how to exercise this to prevent any possible bias/prejudice creeping in?	Yes, there will be an element of judgement required by the manager who will take into consideration any evidence present, mitigation. There is also scope for the process to be re-assessed through an appeal process, though this will also be a matter of judgement.	

1.7	<p><b>Is the Council working in Partnership with other organisations to implement this policy or function? Should this be taken into consideration? eg. Agree equalities monitoring categories</b></p> <p><b>Should the partnership arrangements have an EqIA?</b></p>	No	
1.8	<p><b>Taking the six strands of equalities, do you have any initial thoughts that any of the six equalities strands have particular needs relevant to the policy or function?</b></p> <p><b>Or is there anything in the policy, project, service, contract or strategy that you can think of at this stage that could discriminate or disadvantage any groups of people? ie.</b></p> <p><b>Gender</b>  <b>Disability</b>  <b>Age</b>  <b>Race</b>  <b>Sexual Orientation</b>  <b>Religion/Belief</b>  <b>Transgender</b></p> <p><b>Do any other specific groups have particular needs relevant to the policy, project, service, contract or strategy?</b></p>	<p><b>N.B figures below - first % figure refers to % of disciplinaries, 2<sup>nd</sup> % figure refers % of equalities groups within the council. The data is based on 58 recorded cases.</b></p> <p><b>Age data:</b></p> <p>16-24 yrs 0% (4.58%)  25-49 yrs 39.66% (61.54%)  50-64 yrs 56.9% (31.74%)  65+ 3.45% (2.14%)</p> <p><b>Disabled data</b></p> <p>Non Disabled 92.59% (95.51%)  Disabled 7.41% (4.49%)</p> <p><b>Race</b></p> <p>TW 87.72% (92.49%)  TM 1.75% (1.18%)  TA1 0% (1.58%)</p>	<p>The new draft emphasises that the importance of dealing with conduct at an early stage.</p> <p>Recommendation that this needs to be reinforced with management training, particularly equality and diversity training and people management skills &amp; greater focus on resolution. (This is to address the disproportionate representation of equalities groups in disciplinaries. )</p> <p>Learning &amp; Dev are currently working on Management</p>

		<p>TA2 10.53% (4.28%)</p> <p>TA3 0% (0.47%)</p> <p>BME 12.07% * (7.51%)</p> <p><b>Gender</b></p> <p>Female 68.97% (72.95%)</p> <p>Male 31.03% (27.05%)</p> <p><b>Religion</b></p> <p>None stated 35% (34.15%)</p> <p>Any Religion/Belief 65% (65.85%**)</p> <p><b>Sexual Orientation</b></p> <p>Heterosexual 89.47% (96.70%)</p> <p>LGB 10.53% (3.30% **)</p> <p><b>Transgender</b></p> <p>No data. Data to be collected in future.</p> <p>From the above statistics it can be identified that of the workforce:</p> <p>i) a relatively high number of employees aged 50-64 were subject to the disciplinary procedure</p> <p>ii) a relatively higher % of disabled staff were subject to the disciplinary procedure than non-disabled staff</p> <p>iii) a higher % of black/black British and BME staff</p>	<p>Development training</p> <p>1st, 2nd &amp; 3rd tier training in managing diversity already underway.</p> <p>Ensure appropriate statistics are produced, monitored and analysed with identified trends and concerns being addressed (Strategic/STS HR). This should include monitoring of ALL equality strands.</p> <p>Ensure employees understand the changes to the policy through:</p> <p>-publication of changes on the Source/appropriate media</p>
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		<p>were subject to the disciplinary procedure than white staff</p> <p>iv) a higher % of LGB staff were subject to the disciplinary procedure than heterosexual staff.</p> <p>Employees may have difficulties in the workplace due to a protected characteristic which indirectly leads to them being dealt with under this procedure. Although the procedure sets out to deal with conduct issues in a fair and equitable manner, if it is not used at the appropriate stage this could be disadvantageous for the employee. For example in cases of minor misconduct employees need to be aware of the issue of concern and advised of the council's expectations. If this is not effectively dealt with at an early stage, it could lead to an employee going through the formal stage.</p>	
1.9	<p><b>Did you use any data to inform your initial thoughts above?</b></p> <p><b>What data do you already have?</b></p>	<p>HR Management Information Report - 30 September 2010:</p> <p><a href="http://www.bristol.gov.uk/ccm/cms-service/stream/asset/?asset_id=35233119">http://www.bristol.gov.uk/ccm/cms-service/stream/asset/?asset_id=35233119</a></p>	<p>There are some groups who appear to be disproportionately affected. Additional training for managers will assist in</p>

			<p>addressing this - both in diversity training and management skills. Also need to ensure that new staff know what is expected of them - clearer inductions?</p> <p>Equalities data will be reviewed on a biannual basis in the future.</p>
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1.10	<p><b>Are there gaps in the data that require you to do further work? What are these gaps?</b></p>	<p>Insufficient historical data to observe trends as disciplinary data has only just started to be recorded in the Mgt Information reports</p> <p>Insufficient detail available for a more qualitative analysis.</p>	<p>Review when further data received. Produced every quarter - next data report will be available in 3 months time.</p> <p>The revised policy has gone to consultation with self-organised groups (SOGs) both informally and formally and the trade unions. The revised version is seen as a positive step forward by SOGs - further comments have been invited. A number of changes proposed by the TUs have been incorporated.</p> <p>Need more qualitative data from groups affected by over-representation as to why they perceive this is happening.</p>
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If the result of the screening process is that there is the potential for a significant impact on any equality group or if any equality group has significantly different needs, then a full equality impact assessment must be carried out. If you are unsure please seek advice from a directorate or corporate equalities officer.

Signed  
Service Manager  
Date

Signed  
Directorate Equalities Adviser/Officer or Equalities Contact  
Date

\* race categories

TW = Total White

TM = Total Mixed

TA1 = Total Asian/Asian British

TA2 = Total Black/Black British

TA3 = Total Chinese/Other

BME = Total Minority Ethnic

\*\* of those who responded to this question

## Grievance and Disciplinary appeal benchmarking - November 2010

<b>'CUBA'</b>	<b>Appeals against dismissal</b>	<b>Grievance appeals</b>
<b>BANES</b>	Member appeals panel supported by Legal & Head of HR	Panel: more senior manager, senior mgr from another area & HR
<b>South Glos</b>	Employee Appeals panel (members)	Employee Appeals panel (members)
<b>North Somerset</b>	Employment Committee Appeals panel	Employment Committee Appeals panel

<b>CORE CITIES</b>		
<b>Birmingham</b>	Personnel Appeals Committee	Personnel Appeals Committee
<b>Bradford</b>	Member appeals panel	Member appeals panel
<b>Leeds</b>	Personnel Panel	Personnel Panel
<b>Manchester</b>	Member Appeals panel	Chief Officer of complainant's department
<b>Newcastle</b>	Disciplinary Appeal Committee	Corporate Disputes Panel
<b>Nottingham</b>	Members panel	Members panel
<b>Sheffield</b>	Appeals & Collective Disputes panel (members)	Appeals & Collective Disputes panel (members)

<b>South West Workforce Partnership</b>		
<b>Avon Fire &amp; Rescue Service</b>	Combined Fire Authority panel	Combined Fire Authority panel
<b>Avon &amp; Wilts Mental Health Partnership</b>	Director of HR	Trust Board sub committee
<b>Bristol PCT</b>	Trust Board	Director + another senior mgr + HR

<b>Other employers</b>		
<b>Tower Hamlets</b>	Members appeal panel	Corporate Director

South West Councils		
<b>Unitary 1</b>	Members appeal panel	Corporate Director
<b>Unitary 2</b>	Statutory Appeals Board (members)	Statutory Appeals Board (members)
<b>Unitary 3</b>	2 Chief Officers & HR Adviser	Independent Chief Officer & HR Adviser
<b>Unitary 4</b>	New policy under consultation. Appeal to be heard by Head of Service or Director.	New policy under consultation. Appeal to be heard by Head of Service or Director.
<b>Unitary 5</b>	Member appeals panel	Officer panel
<b>Unitary 6</b>	New Appeals policy being introduced. Appeals to be heard by independent senior manager.	New Appeals policy being introduced. Appeals to be heard by independent senior manager.
<b>Unitary 7</b>	Member appeals panel	Officer panel
<b>County 1</b>	Officer panel	Officer panel

**A Summary of the Number and Outcomes of Disciplinary Member Appeals**

<b>Date</b>	<b>Rejected</b>	<b>Upheld</b>	<b>Partly Upheld</b>	<b>Settled</b>	<b>Total</b>
<b>Jan 08 - Dec 08</b>	7	4	0	1	12
<b>Jan 09 - Dec 09</b>	8	0	3	2	13
<b>Jan 10 to date</b>	14	2	1	2	19
<b>Total</b>	29	6	4	5	44