



people policies

# Disciplinary Policy & Process





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# Policy

## Purpose of the policy

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The Disciplinary Policy exists to provide a framework for managers to deal with misconduct and breaches of discipline in a timely, fair and transparent way.

## Principles behind the policy are

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- To promptly deal with misconduct, breaches of discipline, and breaches of the council's Code of Conduct for Employees, to ensure appropriate conduct as laid out in the Code of Conduct for Employees.
- To apply fairness and equity, transparency, and consistency when dealing with misconduct issues.
- To resolve misconduct issues as early as possible and at as low a level as possible, to prevent major disciplinary action being required.

## Employee's responsibilities

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- Comply with the Code of Conduct and regularly re-read it, as it is periodically updated.
- Seek advice and representation if needed from Trade Unions or another colleague as soon as possible when a disciplinary issue is identified.
- Fully engage with the process and attend meetings when invited.

## Manager's responsibilities

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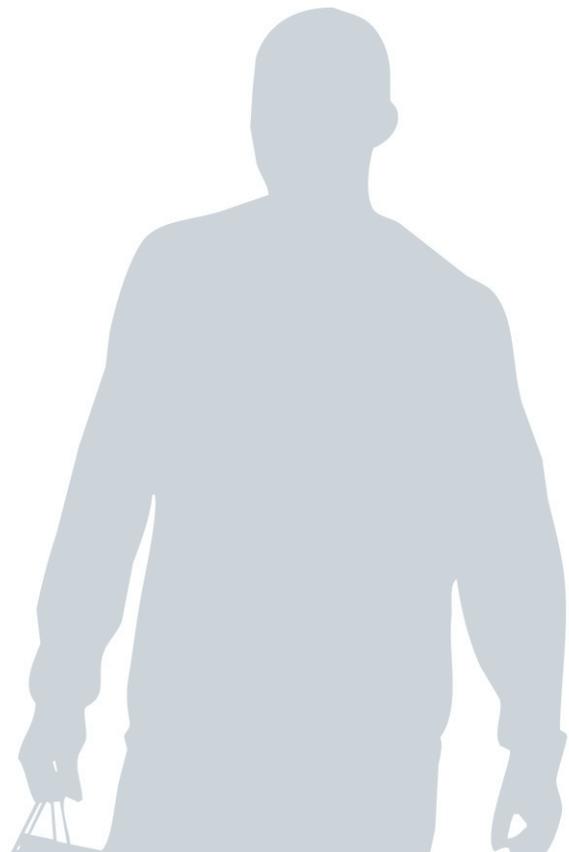
- To reinforce the messages in the Code of Conduct for Employees regularly, in team meetings and with individuals, to encourage compliance with the Code of Conduct for Employees.
- To take prompt action as soon as an issue of misconduct is identified.
- Failure to deal with misconduct issues in the team is a performance issue for that manager, and could result in action being taken against them.
- If the employee concerned is a trade union representative or officer, the manager should inform the full-time trade union officer before starting the process, with the employee's consent.

- The manager is responsible for the application of this policy in their work area.

## Trade union representative's role

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- Provide support and advice to members.
- Attend hearings, and if unable to attend, find a suitable alternative date or a replacement representative.
- Work with all parties to facilitate timely resolution.
- Work with managers, HR Advisors and staff to ensure the policy is adhered to.
- If the employee is not in a recognised Trade Union, they may be accompanied at hearings by a work colleague.



## Recording of meetings

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The audio recording of meetings will not normally be permitted. Recording could make running effective meetings more difficult if participants feel uncomfortable and therefore less willing to contribute. Knowledge that a meeting is being recorded could also lead to a more formal and adversarial approach than would be appropriate or necessary.

If an employee requests that a meeting is recorded they must provide their reasons for doing so for consideration. In some circumstances it may be appropriate to agree a request, or consider alternatives such as provision of a note-taker or allowing additional time for note-taking, particularly if the request is connected with a medical condition or disability.

At the beginning of a meeting the manager should remind the employee that the recording of it is not permitted and ask them to confirm that they are not recording the meeting. The recording of a meeting without permission would be grounds for disciplinary action and this should be made clear.



# Definitions

## Dealing with disciplinary issues

### When you are made aware of misconduct

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- 1 If a manager notices or is made aware of misconduct in their team, you must deal with it as quickly, informally if possible, in order to prevent serious and prolonged misconduct which can result in major disciplinary action being needed.
- 2 The manager must first decide how serious the issue is. Is it gross misconduct? Is it an isolated incident? Is it the first time this has happened? Are all the facts available? It may be helpful to take HR advice if they are not sure.
- 3 If the manager feels they have all the necessary facts to make a decision, and find that it is not too serious, and/or a first offence for the individual, they should deal with this informally.
- 4 If they decide to deal with the issue informally and not take formal disciplinary action, they must speak to the individual to let them know that the misconduct is unacceptable, and agree a way to resolve the issue. They should make it clear that further instances of misconduct may be followed up as part of the formal disciplinary process. They must follow up the conversation in an email, so that they can easily refer back to it in future if needed.

### If there is a team issue

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- 5 If a manager discovers minor misconduct being carried out by many people within their team, they should issue a management instruction to the team so that everyone is aware of their expectations. This can simply be an email to the team, but they must ensure everyone has the opportunity to read it and can ask questions about it. Once they are satisfied that everyone has read and understood the instruction, the manager will be able to take disciplinary action if the misconduct is repeated in the future.

## Deciding on formal disciplinary action

- 6** If the misconduct is serious, has been on-going for some time, or is not the first time the manager has spoken to the employee about it, then they may decide, based on the information available from the initial fact-finding, that there is a need for formal disciplinary action.
- If the manager is confident they can quickly and easily gather all the necessary facts of the case, there is no need for a formal investigation.

## Investigations and suspension

- 7** During the manager's initial fact-finding, if they uncover complex issues, need to talk to witnesses, or find that hard facts are not available, they may decide to conduct or commission a formal investigation, following the Code of Conduct for Investigations. The manager must tell the employee that this is happening, what the allegations are, and who is investigating. They must keep them updated on progress throughout the process, including the reason for any delays.
- 8** Employees must co-operate with any investigation that is being carried out. They should consider preparing a statement describing what has happened from their perspective whilst it is fresh in their memory. If they are in a trade union, they should contact them as soon as possible for support. If the employee is not in a union, they may ask a work colleague or a representative from a Staff-led group to advise them.
- People may feel stressed and upset about the process, particularly if they feel that you have done nothing wrong or been falsely accused of something. Employees struggling to cope can contact the Employee Assistance Programme on 0800 840 6844, who may be able to suggest practical coping strategies, or refer them to counselling if necessary.
- 9** If an employee is sick during the disciplinary process the normal sickness absence reporting procedures should be followed. Managers must stay in contact with the person. It is important for employees to understand that sickness absence will be dealt with in the usual way, and that it will not stop the disciplinary process, or disciplinary hearings if appropriate, from being progressed.
- 10** Employees must not do anything to hinder the investigation. Whilst the manager is gathering the facts of the case, or an investigation is underway, they may decide that the employee should be removed from some or all aspects of their work. This could be because it is felt they could hamper the investigation, or that they could be continuing the alleged malpractice. If this is the case, the manager needs to think about the best option for the business and for the individual. Can they perform restricted duties, be relocated, or given different tasks? If none of this is possible, it may be necessary to suspend them.
- 11** The manager must refer any allegation against an employee concerning safeguarding to the designated senior manager in the directorate before any investigation begins. In respect of financial irregularities, they must inform the Chief Internal Auditor before any investigation.
- 12** Suspension is a last resort as it is a huge cost to the business. It can impact badly on colleagues, and is highly stressful for the suspended employee. The manager should take HR advice before suspending someone, and must let their Service Director know. Suspension is a neutral act and not a disciplinary penalty in itself, for example it could be for the protection of the employee.
- 13** When an employee is suspended, the manager must arrange for an independent person to be their point of contact. This contact person is responsible for keeping in touch with the employee, answering any questions the employee may have, and updating them on the progress of the investigation. The contact person must agree with the employee a schedule of contact, so that the employee knows when they can expect to be contacted, and is not being forgotten about.
- 14** Employees should not attempt to influence any colleagues involved in the disciplinary proceedings, therefore contact with colleagues should be avoided while they are suspended. The exception being their trade union representative, if applicable. However, if they wish to contact colleagues at work in preparation of their case to answer any allegations they should check with their contact person in the first instance. The manager should also consider what duties the employee currently carries out, and whether they need to be given to other people on the team.

**15** When an employee returns from suspension, whether they have a disciplinary case to answer or not, they will need support from their manager in order to recover from the psychological impact of the suspension, and to help them get back to working productively again as soon as possible. The manager should meet with the employee either when they return, or before if possible. At this meeting they will:

- agree what will be communicated to the rest of the team about the case
- update the employee about any changes that have happened at work since they were suspended
- discuss any support necessary to help them back into work.
- tell them how to contact the Employee Assistance Programme, who can help them manage feelings of stress, and to regain a sense of control over their own work, feelings and behaviour.

**16** When the investigation (or manager's fact finding) is completed, the manager must decide if there is a disciplinary case to answer. Any decision will be based on the balance of probability. If the manager determines there is no case to answer, they must arrange to meet with the employee to communicate this.

**17** If the manager decides that there is a disciplinary case to answer they must arrange a disciplinary hearing. The manager chairing the hearing should be a different to the investigating manager / manager making the decision that there is a case to answer, and preferably more senior. If this could result in potential dismissal refer to the HR Delegations for guidance on who can hear the case.

## **Preparing for the disciplinary hearing**

**18** If there will be a disciplinary hearing the manager must write to the employee, letting them know the allegations against them, and inviting them to the formal disciplinary hearing. They must tell them they have a right to be accompanied. They must also let them know that they will have the

opportunity to present their case including any mitigation, and what the deadline is for submission of any papers that they will refer to. Where possible, managers should try to arrange a mutually convenient date for the disciplinary hearing, by talking to the employee and their trade union representative or work colleague. Employees have a responsibility to attend all meetings wherever possible. If this hasn't been possible, they must ensure that they allow them up to 5 working days' notice in order to arrange their union or other colleague representation, arranging a different representative or colleague if necessary.

**19** Employees must also be advised if the allegations amount to potential gross misconduct, and be aware that a potential outcome is dismissal. 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 examples of gross misconduct are:

- 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
- accepting or offering a bribe or other secret payment or other breach of the Bribery Act 2010
- 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 for Employees
- 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.

This is not an exhaustive list. If a manager believes they are dealing with gross misconduct that does not appear on the list, they should take advice from HR.

- 20** The manager must submit any papers they wish to refer to by the deadline set before the disciplinary hearing itself.
- 21** The manager must arrange an independent note-taker to be present at the hearing if there is a possibility that the hearing could result in dismissal. The manager will be accompanied by an HR Consultant, and the employee can be accompanied by a trade union representative, arranged by them.
- 22** On the day of the hearing, if the employee or their representative cannot attend, both parties need to work together to arrange an alternative date within five working days of the original date. If this is not possible because the employee unreasonably refuses another suggested date, the manager is able to carry out the hearing without them present. They may still make a written submission if they wish to.

- 23** Other less experienced managers, trade union representatives, and representatives from staff-led groups may ask to shadow the hearing, for their own development. This is encouraged, as it is a valuable way of gaining confidence and experience and learning from real examples. The employee has the right to refuse this if they wish. The person shadowing must not take part in the hearing in any way, must keep everything confidential, and must understand that their role is purely to observe.
- 24** Any witnesses called by either the manager or employee will be invited into the hearing at the time that they are required to give their statement, and must then leave as soon as they have made their contribution.

## During the hearing

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- 25** The manager chairing the hearing must explain what will happen in the hearing, introduce everyone in the room, and explain what their role in the hearing is. They will usually ask the manager presenting the allegations to put across their case first, and call any witnesses they may have brought. Then everyone will have the opportunity to ask questions. When the questions have been answered, the Chair will ask the employee to present their case, and call any witnesses that they have brought. Then everyone will have the opportunity to ask any questions. Once these questions have been answered, the Chair will ask each party to sum up their case, and then the meeting will be adjourned.
- 26** When the meeting is adjourned, everyone will leave the room, with the exception of the Chair and their HR advisor. The Chair will assess the findings from the hearing, and decide what sanction, if any, they will give to the employee.
- 27** The Chair will call everyone back into the hearing to communicate their decision.
- 28** The possible sanctions are:
  - Level 1: Recorded warning – stays on file for six months
  - Level 2: Written warning – stays on file for one year
  - Level 3: Final written warning – stays on file for one year

- Level 4: Dismissal (without notice in cases of gross misconduct)

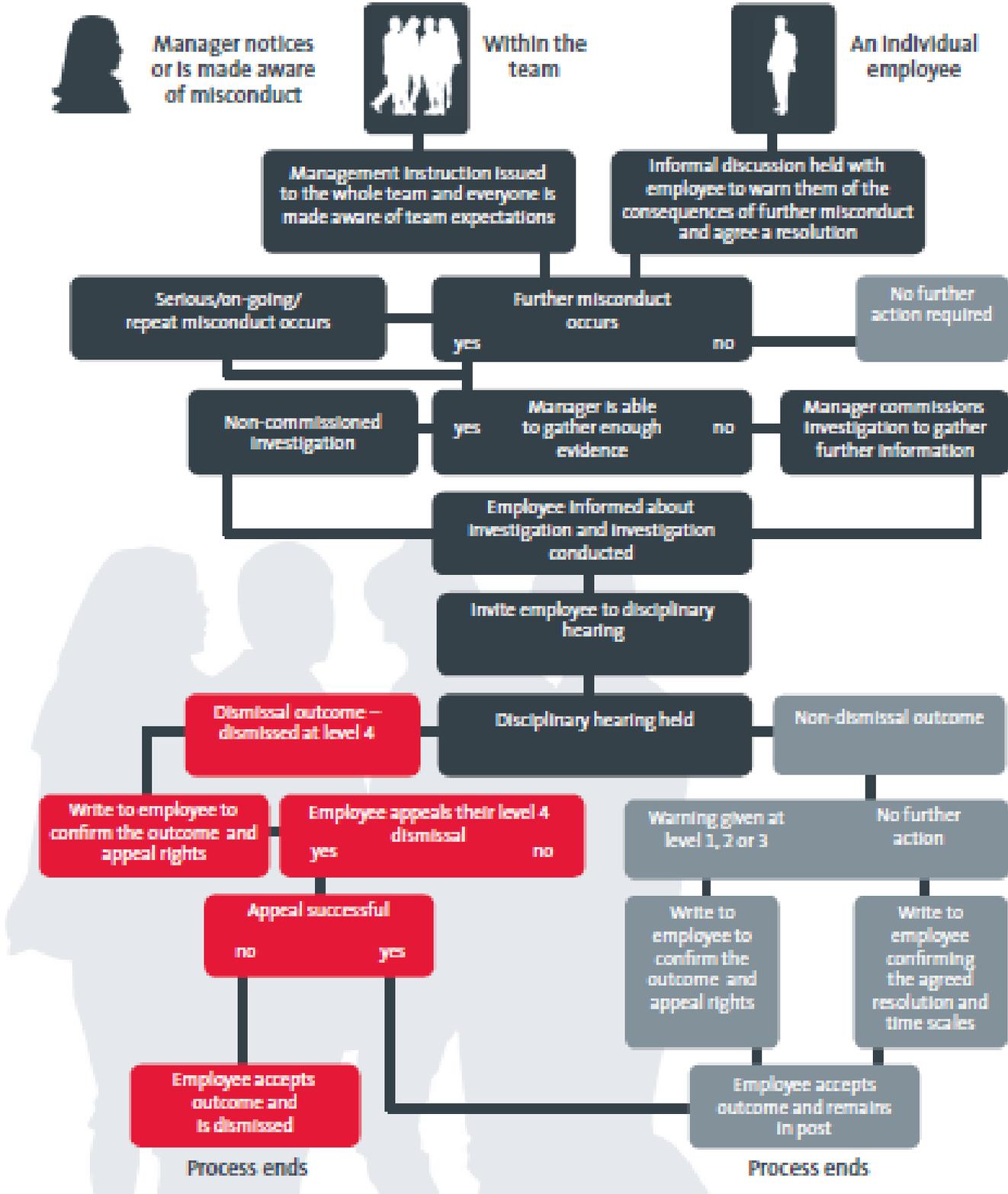
Disciplinary warnings will be disregarded for disciplinary purposes once the above periods of time have elapsed. In exceptional circumstances, managers can choose a longer time limit for the final written warning, but should seek HR advice before doing so.

## After the hearing

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- 29** The manager must follow up the decision in writing to the employee, along with appeal rights. The letter should explain the reason for the decision as stated during the hearing.
- 30** If the employee wishes to appeal the decision, they must submit their appeal within five working days of receipt of their letter. Please see the Appeals policy for information on this stage of the process.

# Disciplinary process



# Additional guidance and support

This policy provides you with an overview of the purpose of the policy and the roles and responsibilities of those for whom it is intended. It also provides guidance in the Process section on the application of the policy. There are other documents which provide more detail and helpful guidance that should be read in conjunction with the policy and these are listed below.

## Additional guidance

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**Employee Assistance Programme**  
Telephone number 0800 840 6844

**PMDS information**

**The Bristol employee competence framework**

**Model conduct of disciplinary hearings**

**Investigation Service**

**Disciplinary guidance for managers**

## Associated policies

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**Code of conduct for employees**

**Improving performance policy**

**Appeals policy**

**Code of conduct for investigations**

**Grievance policy**

**Whistleblowing policy**

**Some other substantial reason for dismissal**

## Letters and forms

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**Commissioning document**

**Confidentiality agreement**

**Invite for alleged perpetrator to attend disciplinary investigation**

**Invite for member of the public to attend disciplinary investigation**

**Invite for witness to attend disciplinary investigation**

**Suspension letter**

**Disciplinary appeal hearing invite**

**Invite for alleged perpetrator to attend disciplinary hearing**

**Invite for witness to attend disciplinary hearing**

**Warning letter**

**Dismissal and re-engagement**

**Form to register intention to appeal against dismissal from BCC**

**Gross misconduct dismissal**

**Misconduct dismissal**

**Long term sickness potential dismissal notification**



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The audience of this document is made aware that a physical copy may not be the latest available version. The latest version, which supersedes all previous versions, is available on The Source.

Those to whom this policy applies are responsible for familiarising themselves periodically with the latest version and for complying with policy requirements at all times.

### **History of most recent policy changes – must be completed**

Version	Date	Change
V.2.00	7 September 2017	Separate Manager and Employee versions of this policy amalgamated into a single document.
V.1.00	1 April 2014	Re-formatted policy

