



Disciplinary Policy and Procedure

Introduction

Cotswold District Council prides itself on being an employer of choice. With an incredibly varied role in delivering the very best for our residents, communities and businesses, our employees are committed and really make a difference. In return, we seek to support our workforce by ensuring they always have a positive and pleasant working environment, where all employees are treated fairly and consistently.

Valuing our workforce ensures having policies and procedures in place to manage any behaviours that do not reflect our vision and values and the high standards we set, ensuring any issues are managed promptly and reasonably.

This policy outlines the disciplinary procedure, the roles of those involved and the support that is available. This policy also covers issues relating to poor attendance and timekeeping.

If we have any concerns about your conduct, we will usually attempt to talk to you about this on an informal basis. An early conversation may be enough to identify the issue and take steps to resolve it. Most minor conduct-related issues can be resolved informally.

However, where an informal approach is unsuccessful, or the allegations are so serious that an informal approach is inappropriate, we will follow a formal disciplinary procedure.

This policy does not form part of your contract of employment, and we reserve the right to amend or withdraw it at any time.

Scope

This policy applies to employees of CDC, other than the Chief Executive and the statutory officers for whom separate arrangements exist as detailed in their contract of employment. It does not apply to contractors, consultants or any self-employed individuals working for CDC.

Grievances

If you have a grievance that relates to ongoing disciplinary proceedings, you should raise this during the disciplinary procedure with reference to the grievance procedure (for example during the disciplinary hearing or appeal stage). The reason for this is so that the grievance can be addressed in the context of the relevant disciplinary proceedings to which it is related and so that any correction which is applicable can be made quickly and with the least disruption.

Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently. [Add hyperlink](#)

If you raise a grievance during disciplinary proceedings that is unrelated to those proceedings, the disciplinary proceedings and grievance procedure could continue to run independently.

We recognise that a disciplinary procedure can be stressful and upsetting. Everyone involved in the process is entitled to be treated calmly and with respect.

We will not tolerate abusive or insulting behaviour from anyone taking part in a disciplinary procedure and treat any such behaviour as further potential misconduct. Making malicious, vexatious, or false allegations will not be tolerated and is a disciplinary offence.

Remote proceedings

Where it is not possible to hold a face-to-face meeting under this procedure (for example in respect of incapacity or practical difficulties in holding the hearing or as a reasonable adjustment), we will conduct the process remotely. We will ensure that you and your representative have access to the necessary technology for participating. Your rights will not be affected, and we will ensure that the procedure remains fair and reasonable.

Right to Representation

At any formal meeting you have the right to be represented by a work colleague or a Trade Union representative. However, consideration will be given to another person in exceptional circumstances.

Adjustments to proceedings

If you have a disability that may have an impact on your ability to participate fully in this procedure, or if you need assistance because English is not your first language, you should let us know by contacting the relevant person holding the meeting, who will make appropriate arrangements for you. **ED&I hyperlink – extend it to reflect the wider EDI statement – not reflective of current EDI**

Recording of meetings and hearings

For the avoidance of doubt and for the benefit of all parties, the process will include the digital recording/tape recording of investigatory meetings and hearings where this is agreed by all parties. The record of the meeting, whether written or digital, will be shared with you. The recording of interviews and hearings facilitate full and more accurate records for the investigating officer as well as for the interviewee(s) and, in the case of hearings, the panel members. It is intended to use the facility of recording only for the transcribing of interviews being conducted as part of a formal investigation and, where appropriate, subsequent hearings. This is to aid in the production of accurate records of interviews and hearings. Recording can be suspended at the request of either party for a break in the interview/hearing.

You will be informed that investigatory interview or hearings will be digitally recorded when arrangements are made to set up the meeting if this will be the case. Once the equipment is set up for use, a check will be made to test that it is fully functional. At the start of any interview or hearing the date, time and location will be recorded. All parties present will be asked to introduce themselves to enable later voice identification. Once the recording for the investigatory meetings have been transcribed, the transcript will be forwarded to you and if there is a concern regarding accuracy of the transcribing you will be given the option to listen to the recording. Recordings of interviews will be held securely until the conclusion of the investigation and subsequent hearing if required. The recording produced as part of an investigation will not go forward to a hearing; the transcript will be used.

If the matter under investigation is also a possible criminal offence the council reserves the right for the investigatory interview to be an interview under caution, to protect your legal rights and also to protect the integrity of any further criminal investigation.

You, or any person acting on your behalf, are not permitted to record electronically any meeting that we hold under this procedure. This is to encourage openness and full participation. Any breach of this provision may lead to further disciplinary action, which could include dismissal.

In certain limited circumstances, we may permit or arrange for a meeting to be recorded electronically, for example where it is a reasonable adjustment for an employee with a disability. Where we permit or arrange for a meeting to be recorded electronically, we will take responsibility for making the recording.

Where we intend to record meetings held remotely, we will comply with our data protection obligations and obtain prior consent from all attendees.

Change of circumstances

Sometimes circumstances prevent parts of this procedure from being followed in full. For example, employees may be too ill to participate in a disciplinary hearing (if one is required) or a specified line manager may be unavailable to chair the hearing. When this happens, we will do our best to ensure that you fully understand the proceedings so that your response is fairly and carefully considered at the Hearing.

In the case of an investigatory interview then we will always seek to start by rearranging the interview in the first instance where it cannot be attended through an employee being too ill to participate. When this happens, we will do our best to ensure that you fully understand the allegations and are given a proper opportunity to respond to them.

Postponement of meetings

We will make every effort to ensure that any meeting we hold under this procedure is scheduled for a time and place that is reasonable and within your normal working hours. You are therefore required to attend the meeting if it is possible for you to do so. If you are unable to attend, then we will normally reschedule the meeting once to a new time when your attendance should reasonably be possible.

However, it is important to ensure that disciplinary procedures are completed within a reasonable timescale. We reserve the right to proceed with a meeting in your absence when it has not been possible to arrange a meeting that you are able to attend. In that case, we will make every effort to ensure that you are able to make representations in writing or through a representative.

Employees may bring either a work colleague or a Trade Union representative to a hearing and something we allow for fact finding investigation meetings. Please note there is no right to legal representation for internal meetings. If your work colleague or Trade Union representative is not available to attend the meeting, we will agree to postpone and seek to agree a mutually convenient time. However, any such postponement must be short, and we reserve the right to proceed with the original meeting if no new date can be found that is within five working days of the scheduled date.

Conduct and behaviour

Gross misconduct

Gross misconduct is conduct that is so serious that it justifies dismissal without notice or payment in lieu of notice, although we will always consider the circumstances of any case before deciding on the appropriate penalty.

Examples of gross misconduct include (but are not limited to):

- theft and dishonesty
- fraud and corruption
- physical violence
- serious instances of bullying or harassment (whether it takes place in person or online)
- acts of discrimination against fellow staff members, clients or customers
- deliberate damage to company property

- any conduct that negatively affects our reputation
- unauthorised disclosure of confidential information
- serious breach of our rules, including, but not restricted to, health and safety rules and rules on computer use
- consuming alcohol or unlawful drugs during working hours or in the workplace
- smoking (including the use of e-cigarettes) in any unauthorised area
- unauthorised use of computer equipment
- misuse of company passwords or log-in details
- deliberate breach of procedures on the handling of personal data
- deliberate refusal to follow reasonable instructions
- accessing obscene or pornographic material while at work or on equipment that we provide
- breach of cash-handling procedures
- breach of requirements relating to safeguarding of children or vulnerable adults
- deliberate breach of professional standards relevant to your employment and
- offering or accepting a bribe within the meaning of the Bribery Act 2010.

Misconduct

Examples of misconduct for which disciplinary action is appropriate include (but are not limited to):

- persistent poor timekeeping
- breach of our absence reporting procedures
- general disobedience
- careless work
- time-wasting
- disruptive behaviour and
- insulting or offensive behaviour towards others, not amounting to serious harassment or bullying.

Where any actions constitute possible criminal offences, a referral will be made to the appropriate body or organisation for investigation and any criminal investigation may be conducted concurrently.

In some circumstances, other agencies may also be involved in parallel investigations. In situations where the allegations raise safeguarding concerns, these will be referred to the lead safeguarding officer for the council (or their deputy) and may then be referred to the adult safeguarding team (for allegations relating to adults) or the local authority designated officer in the county council (for allegations relating to children).

Where the allegations relate to suspected criminal offences including fraud, theft or corruption, HR will liaise with the Counter Fraud and Enforcement Unit. In such circumstances, a joint investigation may be necessary.

Where the police, counter fraud and enforcement or the county safeguarding teams may also be investigating, the council will liaise with these bodies to ensure that the council investigation does not jeopardise any criminal investigation. Wherever possible, the council will progress its internal investigation alongside any other external investigation

Actions outside work

We may consider your actions outside work (including your use of social media) to be gross misconduct, or misconduct, if they affect your ability to carry out your job or have a negative effect on our reputation.

Procedure

Allegations of Gross Misconduct / Misconduct

Where an allegation is made against you that cannot be resolved informally, or it is not appropriate to do so, the allegation will be explained to you by your line manager (or, where appropriate, a different line manager). The details of the allegation will also be confirmed to you in writing, together with a copy of this disciplinary procedure.

Suspension

On occasions it may be necessary to consider suspending an employee (on full basic pay) from duty, assign the employee to amended duties, or temporarily redeploy them to an alternative work base or role during the course of the investigation process.

The decision to suspend an employee will be made by management and will only be considered where:

- there is a serious allegation of misconduct and working relationships have severely broken down
- the employee could tamper with evidence, influence witnesses and/or sway the investigation into the allegation
- there is a risk to other employees, property or customers
- the employee is the subject of criminal proceedings which may affect whether they can do their job.

Suspension will also be considered in other circumstances if it is reasonably believed that the suspension of the employee will enable a fair investigation to be completed.

Suspension is in no way intended to indicate guilt on your part, but is an administrative measure designed to protect the business or ensure the smooth running of the disciplinary procedure. Any period of suspension will be regularly reviewed, kept as short as possible and will be on a fully paid basis.

Stage 1 - Investigation

We will investigate the allegations to decide whether there is sufficient evidence to justify taking the matter further.

An appropriate person, who may be an external independent investigator, will be appointed to conduct the investigation and will talk to you at an early stage to hear your response to the allegations and will talk to anyone else who may have relevant information such as the line manager, colleagues and witnesses to the event being investigated etc.

Where appropriate, the investigation may also include the examination of documents, including emails and other forms of electronic communication and you are invited to bring or any relevant documents to the meeting (or send the documentation afterwards) as the purpose of the investigation is to establish the facts so that a decision can be made about any disciplinary action and whether or not an act of misconduct has been committed. It is important that you cooperate fully with the investigation process as this is the best way to ensure a fair outcome.

Once the investigation is complete, management will decide whether to proceed to a formal disciplinary hearing or whether the matter can, in fact, be resolved informally or without any further action.

Stage 2 - Disciplinary Hearing

Invitation to a disciplinary hearing

If we consider that it is necessary to hold a disciplinary hearing, we will confirm this to you in writing. You will usually be given at least five days' notice of any hearing, depending on the complexity of the case, to allow you to prepare and to arrange for a work colleague or Trade Union representative to accompany you.

You will be entitled to be accompanied by a fellow employee or a trade union representative. The responsibility for finding a work colleague or Trade Union representative rests with you. If your chosen work colleague or Trade Union representative is not a fellow employee, we reserve the right to check their credentials as an accredited trade union representative.

We will give you a copy of any evidence/investigation report collated during the investigation in advance of the disciplinary hearing, and you will be invited to submit any further evidence that you consider to be relevant.

The disciplinary hearing

The disciplinary hearing will be conducted by the chair. Details of the chair will be given in the invite letter.

The evidence gathered during the investigation will be presented at the Disciplinary Hearing by the Investigating Officer or a Manager and you and your work colleague or Trade Union representative will be given an opportunity to confer and to respond. You may also let us know if you are seeking to call on witnesses to give evidence on your behalf if it is relevant to the issues being considered to the meeting.

The chair of the disciplinary hearing may choose to adjourn the meeting so that further evidence can be obtained. If this happens, the hearing will be reconvened once this is done, and you will be given an opportunity to respond to any new evidence. Before the hearing closes, you (or your work colleague or Trade Union representative) will be given an opportunity to make a closing statement. Once closing statements are made, no further comments will be accepted.

The outcome

The chair of the hearing will usually adjourn for a period to consider the outcome. The outcome will usually be communicated when the hearing is reconvened but will, in any case, be confirmed to you in writing as soon as possible and usually within seven working days after the hearing.

Disciplinary penalties

If the allegations are upheld to any extent, formal disciplinary action may be taken. This will usually take the form of a first written warning for a first offence. However, we reserve the right to implement this procedure at any stage depending on the circumstances and misconduct.

A first written warning is appropriate for instances of misconduct that are sufficiently serious to warrant disciplinary action, but where there is no current warning in place. The warning will set out the nature of the misconduct and explain that any further misconduct (similar or otherwise) will be likely to result in further disciplinary action.

A final written warning is given in cases of serious misconduct or where there is a live first written warning in place and the circumstances justify it. It will set out the nature of the misconduct and make it clear that any further misconduct (similar or otherwise) will be likely to result in dismissal.

There may be some cases where it is appropriate to give you a final written warning as a first sanction in consideration of the seriousness of the offence (this could be an alternative to dismissal in a potential gross misconduct situation).

If you are found to have committed misconduct while subject to a live final written warning, the outcome may be that you are dismissed with notice.

If you are found to have committed gross misconduct, the outcome may result in you being dismissed without notice as a summary dismissal. In these circumstances, your contract of employment will end immediately, although this will not affect your right of appeal.

In exceptional circumstances (for instances where you are likely to continue to commit misconduct even if subject to warning), you may be summarily dismissed even if no warning of dismissal has been given. Depending on the terms of your contract, this may involve being given a payment in lieu of notice.

If you are dismissed with notice, we reserve the right to instruct you not to work for the duration of your notice period. This may include a payment in lieu of notice, garden leave and you being asked to take your holiday.

Stage 3 - Appeal

Appealing against the outcome

If you consider the disciplinary process and/or outcome are unfair you are entitled to appeal.

You should appeal in writing to an appropriate line manager or senior manager within five working days of receipt of the disciplinary outcome letter.

You should also set out in writing the grounds on which you believe the outcome of the original hearing to have been unfair or flawed and why you feel it to be flawed.

Appeal hearing

Following receipt of your appeal, we will arrange an appeal hearing within five working days. However, if this is not possible, you will be informed of the reason for any delay.

You are entitled to be accompanied at the appeal hearing by a fellow employee or a trade union representative.

The appeal meeting will be conducted by a senior employee or another delegated person who will consider the grounds that you have put forward and review the conclusion reached in the original disciplinary hearing.

At the hearing you will be given the opportunity to explain why you feel the initial hearing reached the wrong conclusion.

Outcome of appeal

Following the appeal hearing, the relevant line manager will inform you in writing, usually within seven working days, of the outcome. The outcome may result in the original decision being upheld, the original decision being overturned, or a lesser sanction. The appeal will not result in the sanction being increased.

If the result of the appeal is that a decision to dismiss you is overturned, you will be reinstated with immediate effect. You will be reimbursed in full for any wages lost since your dismissal.

The outcome of the appeal is final.

Duration of warnings

When you are given a warning, we will tell you how long it will remain live. This will depend on the specific circumstances. However, in general:

- a first written warning remains live for up to six months and
- a final written warning remains live for twelve months.

Warnings may be live for a longer period depending on the seriousness of the misconduct and the wider circumstances of the case.

Once a warning has expired, it will no longer be considered when determining the level of any further disciplinary action.

Trade union representatives

If you are an accredited representative of a recognised trade union, we will endeavour to take no action under this procedure (except for suspending you in a case of alleged gross misconduct) until we have had an opportunity (with your agreement) to discuss the matter with a full-time official of the union.

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