



## Disciplinary Policy & Procedure

### Policy History

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# Section A

## Disciplinary Policy

### 1.0 Policy Statement

The purpose of this policy is to apply Plymouth City Council's disciplinary procedure in a fair and consistent manner to all employees of the Authority.

### 2.0 Scope of Policy

- 2.1 This policy and procedure applies to Plymouth City Council employees employed under the provisions of the following negotiating bodies as amended locally:
- JNC for Local Authority Craft and Associated Employees
  - JNC for Youth and Community Workers
  - NJC for Local Government Services
  - Employees on Soulbury and Youth and Community terms and conditions
- 2.2 It also applies to those employed under the terms and conditions of the School Teachers Review body where adopted by the individual Governing Body.
- 2.3 Although this procedure applies to employees of Plymouth City Council, some groups are excluded. (See section 2.4 and 2.5 below).
- 2.4 This procedure does not apply to employees who are on a probationary period. Separate guidelines for this group are given in the Plymouth City Council Probationary Policy.
- 2.5 In addition, this procedure does not apply in the following situations:
- Termination of a fixed term contract
  - Dismissal due to redundancy (See Redundancy policy and procedure on the Intranet for further guidance)
  - Early retirement or retirement on the grounds of efficiencies of the service or department (See Early retirement policy and procedure & Working Beyond the Age of 65 on the Intranet for further guidance)
  - Dismissal on the grounds of Ill Health Retirement
  - Dismissal on the grounds of Ill Health Capability
  - Dismissal for "some other substantial reason", for example where an employee is temporarily replacing another employee who is absent from work on maternity leave or secondment

- Dismissal for breach of a statutory enactment
- 2.6 Guidance on the above situations is given in the relevant policies and procedures which can be found in the document library on Plymouth City Council's Intranet. Further guidance can be sought from the local HR Department.

However, appeals against dismissals for the above reasons will be heard in accordance with the Appeal hearing procedure in Appendix D.

### **3.0 Aims**

- 3.1 The overriding aim of the disciplinary policy and procedure is to encourage improvement amongst employees whose conduct or performance is unsatisfactory.
- 3.2 This disciplinary policy and procedure fulfils the statutory requirements laid down by Government. Employers have a legal requirement under the Dispute Resolution procedure set out in the Employment Act 2002 to have disciplinary procedures in place.
- 3.3 The disciplinary policy and procedure comply with best practice as detailed in the Advisory, Conciliation and Arbitration Service (ACAS) Codes of Practice and advocated by the Chartered Institute of Personnel and Development.
- 3.4 The disciplinary policy and procedure are designed to promote equality, fairness and consistency within Plymouth City Council.

### **4.0 Responsibilities**

#### **4.1 Employees**

- 4.1.1 All employees within Plymouth City Council have a responsibility to make sure they can access and understand the rules governing their performance and behaviour in the workplace. They also have a responsibility to endeavour to meet these standards as a representative for and employee of the Authority.
- 4.1.2 There is a requirement for employees to declare any conflict of interest that arises if they are involved in disciplinary matters

#### **4.2 Management**

Managers are responsible for maintaining and setting standards of performance in Plymouth City Council. They are also responsible for

ensuring that disciplinary rules are in place and that employees are aware of and have access to these rules.

### **4.3 The Authority**

Plymouth City Council also has a responsibility to avoid discrimination, improve communications and promote positive employee relations throughout the Authority with employees and their representatives. Plymouth City Council also has a responsibility to continuous improvement to ensure an excellent public service. There is a commitment from Senior Management and Elected Members to this approach.

## **Section B**

### **Disciplinary Procedure**

#### **1.0 Purpose**

- 1.1 The purpose of this disciplinary procedure is to give guidance on the standards of behaviour and conduct expected of Plymouth City Council employees and how to deal with breaches of those standards.
- 1.2 This procedure is designed to promote fairness and consistency of treatment in disciplinary matters relating to Plymouth City Council employees and emphasise and encourage improvement in individual conduct. Therefore this procedure is therefore viewed as remedial rather than punitive.
- 1.3 This procedure enables Plymouth City Council to provide a mechanism to deal fairly and equally with any shortfalls in capability (other than ill health) or conduct and to inform employees when they are falling below requirements and give remedies for improvement.
- 1.4 However breaches of these rules may result in a variety of outcomes which in extreme cases include dismissal. Therefore guidance in this area is necessary via this document.
- 1.5 Each department may have specific operational rules and managers must make it clear to their staff any departmental rules that apply and make reference to the relevant documentation where appropriate.
- 1.6 This document fulfils the statutory requirement to comply with the Employment Act 2002. It also conforms to ACAS Codes of Practice which reinforce and encourage good employee relations.
- 1.7 This procedure form part of the Contract of Employment for Plymouth City Council employees.

In summary the procedure has broadly two types of action, one informal (Section 2.0) and the other formal (Section 3.0).

#### **2.0 Informal action**

##### **2.1 The reason for informal action**

Managers with line management responsibility are encouraged to deal with low level and minor issues of capability or conduct informally, in the first instance.

## **2.2 The benefits of informal action**

- 2.2.1 Minor breaches of discipline can often be dealt with informally with benefits to the employee, the manager and the Authority. The advantage of this approach would be to resolve the problem under consideration or correct the inappropriate behaviour as quickly as possible to reduce the risk of disruption of a team, de-motivation and absenteeism for example.
- 2.2.1 However, the manager should monitor and review the situation and failure to improve or a repetition of the offence may lead to formal action being necessary. (Please refer to the Managing performance & Managing attendance policies on the Intranet for further guidance.)
- 2.2.2 Informal action can take the form of a caution or a reprimand, which may be sufficient to correct an employee's behaviour.

## **2.3 Informal process**

- 2.3.1 Informal action may not always be practical, possible or appropriate. For example, it would be inappropriate to respond to an allegation of gross misconduct using informal methods.
- 2.3.2 Informal action may take the form of discussions between the supervisor or line manager and an employee, to establish the facts of the case. If during this informal discussion, it becomes apparent that formal action may be necessary, the manager must adjourn the meeting, tell the employee why the meeting has stopped and a new formal meeting will be arranged for another time, which will be mutually agreed, which is when the process then becomes formal at that meeting.
- 2.3.3 The reason for this adjournment is that an employee has a statutory right to be represented at a formal meeting, (Dispute Resolution regulations 2004) and the employee must be notified of this right and be given every opportunity to arrange for a representative.
- 2.3.4 Accompaniment at an informal meeting can be a full time trade union official or a work colleague. Whilst there is no statutory right for formal representation at an informal meeting, an employee may wish to bring a companion with them for support. Reasonable requests should be considered, particularly in the case of vulnerable or special groups. However management reserves the right to refuse requests. (See Section 4.7 on 'Right of accompaniment').

2.3.5 Informal meetings are by their nature unofficial. However Managers may make journal notes or diary entries and these notes may be subsequently used as part of an on-going fact finding exercise.

## **2.4 Possible outcomes of informal action**

There may be a number of possible outcomes from informal action, including the following:

2.4.1 No further action is necessary

2.4.2 Objective setting to improve individual conduct or performance including specific, measurable, achievable, relevant and time-specific objectives set by the manager and discussed and agreed with the employee. (Please refer to the Managing performance policy on the Intranet for further guidance).

2.4.3 Training needs may be identified and a programme of learning and development may be implemented, with consultation and support from appropriate training resources. The timescale for this training programme will depend on individual circumstances of each case.

2.4.4 An occupational health referral for consultation, counselling or medical assessment may be appropriate as part of the Authority's duty of care to employees.

2.4.5 Monitor and review the situation, perhaps as part of regular supervision and performance management by the manager.

2.4.6 Formal action for example suspension with pay, temporary redeployment to another post or area of work pending the outcome of a formal investigation or disciplinary action.

### **3.0 Formal Action**

Disciplinary action will not be taken until the allegations have been investigated. Notes of all meetings should be taken and kept at all stages of the formal process.

#### **3.1 Suspension**

- 3.1.1 Suspension from work is not a disciplinary sanction but it is an measure which should only be used after careful consideration and under appropriate circumstances.
- 3.1.2 However in certain situations it may be necessary to suspend an employee from their duties pending a formal investigation or a formal disciplinary hearing. For example if an employee's continued presence in the workplace puts themselves or others at risk or if an employee's presence may hamper or compromise an investigation process.
- 3.1.3 Suspension is always on normal contractual pay and is not in itself a disciplinary sanction. Normal contractual pay is calculated in accordance with National Conditions of Service as notified by local agreement. Please take advice from your Departmental HR Adviser before seeking to change any pay arrangements that are already in place for example car user allowance, overtime, bonus.
- 3.1.4 In exceptional circumstances an employee may be instructed by their line manager to leave the workplace immediately and to stay away on normal contractual pay until further notice providing:
  - In the opinion of management the employee's continued presence would be detrimental to the Authority's interests and
  - no Head of Service or Director, who has the authority to implement suspension from duty is available and
  - the instruction is reported to the appropriate designated officer as soon as possible thereafter so that he or she can determine whether the employee is to be formally suspended or reinstated in the workplace.
  - This confirmation of suspension letter must be sent by the Head of Service or Director within three working days of the suspension date and the letter sent by special delivery to ensure receipt.

## **3.2 Alternatives to suspension**

- 3.2.1 Wherever possible, managers should always consider temporary redeployment as an alternative to suspension.
- 3.2.2 The benefits of temporary redeployment are that it keeps the employee actively engaged in work during a period of uncertainty.
- 3.2.3 Maintaining contact with the Authority through temporary redeployment may assist that individual with access to the Trade Union representative and help with case preparation should formal disciplinary action ensue.
- 3.2.4 Management should document in a letter to the employee that suspension was considered but outline the reasons why it was considered inappropriate.

## **3.3 Terms of suspension**

- 3.3.1 If management decides to suspend an employee, they must state the terms of suspension in writing to that employee.
- 3.3.2 The content of this letter will depend on individual circumstances but broadly should include the reason for the suspension and what the employee should and should not do during this period. For example, the employee will be prohibited from returning to their place of work without pre-arranged accompaniment or they may not be permitted to enter any Plymouth City Council premises at all. They must not speak to work colleagues about the case, unless this person has been assigned as a support person or a representative for the employee.
- 3.3.3 If an investigation has been commissioned, the suspension letter may also include basic information about the investigation, for example, who has requested the investigation (the Commissioning Officer), who is undertaking the investigation (the Investigating Officer), what will be investigated, how that investigation will be undertaken and what methods will be used to gather evidence such as witness interviews, Internal Audit reports or relevant performance management documentation.
- 3.3.4 This confirmation of suspension letter must be sent by the Director or Head of Service within three working days of the suspension date and the letter sent by special delivery to ensure receipt.

- 3.3.5 If formal disciplinary action is recommended as a consequence of an investigation, the disciplinary hearing will normally take place as soon as the investigation has concluded.

### **3.4 Situations which may warrant suspension or redeployment**

It would be appropriate to suspend an employee from their substantive post in the following circumstances:

- 3.4.1 Allegations of gross misconduct where an employee's presence in the workplace may hinder or compromise the quality of an investigation into those allegations.
- 3.4.2 An employee's presence in the workplace places them and/or others at risk.
- 3.4.3 Alleged or committed criminal activity outside the workplace may result in suspension.
- 3.4.4 Where proven criminal offences impact on an individual's ability to do their job, for example imprisonment, action may be taken only after careful consideration of all the facts of the case.
- 3.4.5 Management reserves the right to treat alleged or committed criminal offences according to individual circumstances.
- 3.4.6 An allegation of misconduct or gross misconduct against a Trade Union Representative, pending discussions with and the availability of a full time official.
- 3.4.7 Suspensions due to allegations of theft or misappropriation of Council property must be reported to the Internal Audit Department within twenty four hours of the suspension. Where external investigations are being pursued, for example by the Police, the Legal Department should be notified. Please seek further guidance from your Departmental HR Adviser.
- 3.4.8 The situations above are purely illustrative and the list is not exhaustive. Management reserve the right to suspend according to individual circumstances.

### **3.5 Employee requests of access during suspension**

- 3.5.1 During the suspension period, an employee must remain available to co-operate with ongoing investigations which may require their

- 3.5.2 If an employee is suspended and the terms of their suspension do not permit them to enter Council premises, they may be able to attend as a witness in a disciplinary or grievance hearing or appeal in other cases not related to their particular suspension.
- 3.5.3 If formal disciplinary action is an outcome of the investigations, the employee on suspension should be given every opportunity to fully prepare their case. This may involve the release of relevant documentation or access to Council employees as potential witnesses at a disciplinary hearing.
- 3.5.4 A support person for example an HR Assistant may be assigned to an employee on suspension or temporary redeployment, depending on the circumstances of the case. This person can guide and assist the employee on welfare and procedural matters and be a focal point for questions or queries.
- 3.5.5 An employee on suspension may be considered for inclusion on a list relating to the protection of vulnerable groups, for example Protection of Vulnerable Adults List (POVA) and/ or Protection of Children Act List (POCAL) in the light of the Protection of Children Act 1999. Further guidance can be sought from the local HR Department.

### **3.6 Monitor and review**

- 3.6.1 The terms of reference around the suspension or redeployment should be regularly monitored and reviewed by the Director or Head of Service and adjustments made where appropriate.
- 3.6.2 For example reasonable requests by the employee or their representative for information to help them prepare their case for a potential disciplinary hearing will be considered by management. Further guidance can be sought from the local HR Department.
- 3.6.3 If the terms of the arrangements are broken by the employee, management reserves the right to take further action that may be necessary, for example considering suspension if an employee is currently on redeployment. The employee must be advised of this change in writing. Please seek further guidance from your Departmental HR Adviser.

## **4.0 Investigations**

### **4.1 Purpose**

- 4.1.1 The purpose of an investigation is to undertake a fair and objective enquiry into a specific allegation or allegations against a Plymouth City Council employee.
- 4.1.2 Disciplinary action will not be taken until the allegation or allegations have been investigated, unless in exceptional circumstances.
- 4.1.3 A Commissioning Officer will request an investigation is undertaken, specify the terms of reference for that investigation. The Commissioning Officer will usually be an Assistant Head of Service or above and this person will appoint an Investigating Officer to undertake the work.
- 4.1.4 As an outcome of the investigation, a report will be produced by the Investigating Officer and be sent to the Commissioning Officer for consideration. The Commissioning Officer will then decide what action, if any, to take. (See section 4.9 on potential investigation outcomes). Further guidance can be sought from the local HR Department.

### **4.2 Scope of the investigation**

- 4.2.1 An investigation is not a disciplinary hearing. An employee at the centre of the allegation and any witnesses should be reminded of this before interviews commence.
- 4.2.2 Witnesses should be reminded that one of the outcomes of the interview is that the information given may be used at a disciplinary hearing.

### **4.3 Time scales**

Interviews should be timely with as little disruption to all parties as is reasonable and practicable. The advantage of investigating close to the alleged incident/ issue and source of the allegation is to minimise the risk of evidence contamination or compromise witness recall of events.

### **4.4 Vulnerable, disabled, special or other groups**

- 4.4.1 Vulnerable individuals should not be interviewed unless absolutely essential and then only in the presence of a representative or

- 4.4.2 Reasonable adjustments should be made for special groups or employees who have a disability, in accordance with the Disability Discrimination Act 1995 for example providing wheelchair access for a disabled employee.
- 4.4.3 Cultural and/ or gender issues should also be given consideration, for example making the services of an interpreter available for employees.

## **4.5 Confidentiality**

The importance of confidentiality is paramount throughout the investigation and managers should ensure that everything discussed will be treated in strictest confidence. A request by an investigating Officer for an employee to participate in an investigation is a reasonable management request. However in some situations, a witness statement could be provided as an alternative.

## **4.6 Employee failure to co-operate**

An employee at the centre of a potential allegation or allegations must co-operate with the investigating officer as part of the information gathering process. Wilful refusal to co-operate with an investigation is a disciplinary offence in itself. The implications of failing to co-operate or wilfully hinder an investigation may lead to further action being taken against the employee.

## **4.7 Right of accompaniment**

- 4.7.1 All employees being interviewed as part of a formal investigation process have the right to be represented at this interview by a Trade Union official or work colleague. (See section 2.3.4 for further information on accompaniment at informal meetings).
- 4.7.2 The definition of the trade union official, according to the Employment Act 2002 is “someone who is employed by a trade union or an elected union official who has been certified by the union as having undergone suitable training or having the necessary experience to act as the worker’s companion”.
- 4.7.3 Requests for other categories of companion other than those specified in section 4.7.1 above, for example a friend or relative will be considered but management reserves the right to decline such requests for example in the case of a request for a solicitor to be present.
- 4.7.4 Representation at a formal meeting will be restricted to one person only, except in exceptional circumstances. Please seek further guidance from your Departmental HR Adviser.

## **4.8 Investigation report**

- 4.8.1 Once an investigation is concluded, a report is generated. This document includes a summary of why the report was commissioned, it explains who the Commissioning Officer and the Investigating Officer are, the terms of reference around the investigation and the methodology used to gather information. A

4.8.2 The report shall be factual and specific, focused around the terms of reference. It should contain comprehensive notes and reports from other departments if appropriate, for example Legal or Internal Audit. Witness statements should be signed and dated and notes taken at all formal meetings. The report may be used as part of a bundle of documents at a disciplinary hearing.

## **4.9 Potential investigation outcomes**

### **4.9.1 No case to answer**

It may be that having conducted a full investigation, the Commissioning Officer decides that there is no foundation to the allegations and that there is consequently no case to answer.

### **4.9.2 Remedial action**

Such as further training and supervision or a referral to occupational health or counselling. It may also involve transferring the employee to another job can, however this can only occur if another post is identified and the employee agrees to the move. Further guidance can be sought from the local HR Department.

### **4.9.3 Mediation**

A formal structured process of mediation, requiring employee involvement to decide a mutually agreeable way forward or solution. This can be undertaken by the employee's line manager/ Supervisor or if appropriate, another manager not previously involved in the case.

### **4.9.4 Further investigation**

During which the parameters of the employee suspension or temporary redeployment may need to be reconsidered or redefined.

### **4.9.5 Formal disciplinary action**

If formal disciplinary action is recommended by the Commissioning Officer, the formal disciplinary procedure will apply (see Section 5.0 below).

## **5.0 Formal Disciplinary Procedure**

Plymouth City Council's formal disciplinary procedure complies with the requirements of the Employment Act 2002 and ACAS Codes of Practice.

### **5.1 Inform the employee in writing to attend a meeting**

- 5.1.1 The first stage of the formal process is to inform the employee in writing that they are required to attend a disciplinary hearing including the time, date and location of the hearing. This letter should also contain the following:
- 5.1.2 Outline the allegation or allegations, specifying the gravity of these allegations (misconduct or gross misconduct) and the consequences or possible outcomes if the allegations are proven at a disciplinary hearing. For example, in proven cases of gross misconduct, one of the potential outcomes is dismissal.
- 5.1.3 The employee has a statutory right to be represented at a formal disciplinary hearing by a Trade Union representative or work colleague.
- 5.1.4 Notification of attendance will be sent to the employee a minimum of five working days prior to the hearing and the letter should be sent by special delivery.
- 5.1.5 Employees should also be reminded that if they fail to attend the hearing without reasonable notice and without good reason, it will be held in their absence. In these circumstances the employee must be advised they can be represented in their absence by a Trade Union representative or work colleague and/ or provide a written submission. See section 6.0 for Dealing with non-attendance.

### **5.2 Hold the disciplinary hearing**

- 5.2.1 A detailed sequence of events (appendix C and D) should be followed for all disciplinary and appeal hearings.
- 5.2.2 Procedural issues and objections can be raised using this sequence and it allows for adjournments so the facts can be carefully considered. The aim of this sequence is to promote transparency, fairness and consistency in the application of the disciplinary policy and procedure. A note taker will be in attendance for the hearing.
- 5.2.3 A senior line manager will put forward the management case at a disciplinary hearing.

- 5.2.4 The Head of HR or a nominee will be present to advise the Chair of the Disciplinary hearing.
- 5.2.5 The Chair will be a Director, Head of Service or their nominee.
- 5.2.6 Requests for an adjournment by the employee, their representative or management should be made to the Chair and the frequency should be reasonable and appropriate. Adjournments should not be used as a way of avoiding questions.
- 5.2.7 The Chair may wish to adjourn to deliberate the facts of the case before reaching a decision, consider procedural issues or matters for further clarification. The employee's personnel file may be examined during an adjournment or other sanctions which are not time-expired may be considered, if relevant to the current case.

### **5.3 Inform the employee of the decision**

- 5.3.1 The employee will be notified by the Chair their decision verbally on the day, if possible.
- 5.3.2 This decision will be confirmed in writing within five working days of the meeting and sent to the employee by special delivery.
- 5.3.3 The confirmation letter must state the details of the findings including the reason for the sanction, any improvement that is expected or required and specify the time scales for improvement, if appropriate. The letter should also give guidance on how to appeal. (See section 5.4 below on notifying the employee of their right of appeal).
- 5.3.4 The situation should be monitored and reviewed regularly after the disciplinary hearing and any further issues identified.
- 5.3.5 Failure to improve could lead to further disciplinary action which may ultimately lead to dismissal.
- 5.3.6 If compulsory transfer or demotion is incorporated into the sanction, the employee must be advised of this verbally at the hearing and informed of this action in the confirmation letter.
- 5.3.7 For employees who are dismissed (with or without notice) or have their appeals relating to dismissal rejected, the employee must be notified that their name will be added to a list of individuals not to be re-employed by Plymouth City Council in accordance with the 'Redeployment of Former Plymouth City Council employees Policy'.

5.3.8 The Head of HR or nominee such as an HR Adviser to the Chair should ensure that a disciplinary Monitoring form is completed and forwarded to the Employee Relations team as an internal record of the sanction.

#### **5.4 Notify the employee of their right of appeal**

5.4.1 An employee has a right of appeal against a disciplinary decision and details of how to appeal should be incorporated in the confirmation of decision letter. (See section 5.3.3 above for details on what should be included in the confirmation letter).

5.4.2 Requests for an appeal should be made in writing to the Head of Human Resources within five working days from receipt of the disciplinary decision letter.

5.4.3 The date of the appeal hearing will be agreed with the employee within ten working days of receipt of the appeal letter.

5.4.4 Appeals will normally be heard within four weeks of the appeal being lodged. However a date outside this four-week period could be arranged if mutually agreed by both parties.

5.4.5 The appeal letter should fully state the grounds on which the employee is appealing against the disciplinary decision. Further guidance can be sought from the local HR Department.

5.4.6 Appeal hearings will be structured around the grounds of the employee's appeal and will not be a full re-hearing of the case. This is to minimise the disruption and stress to the employee and promotes further decision-making.

5.4.7 Appeals against a written warning will be heard by a Director, Head of Service or their nominee.

5.4.8 Appeals against dismissal or summary dismissal will be heard by a minimum of three Elected Members. One of these individuals will act as a Chair for the appeal hearing.

5.4.9 The Head of HR or a nominee will be present to advise the Chair of the Appeal Panel.

5.4.10 The appeal may result in a variation or cancellation of the original decision. The decision of the Appeal Panel will be final.

5.4.11 Notification of the Chair's decision will normally be given verbally to all parties concerned and will always be communicated to the employee with five working days from the date of the disciplinary hearing. This letter should be sent to the employee by special delivery.

## **6.0 Dealing with non-attendance**

Plymouth City Council is legally obliged to rearrange a disciplinary meeting once only if the employee or their representative is unable to attend.

- 6.1 In accordance with ACAS guidance, the deferment of the hearing need only be for a maximum of five days.
- 6.2 The employee must take all reasonable steps to attend the meeting. See section 5.1.5 above.
- 6.3 Sickness may be a reason given for non-attendance but is only valid if the employee is too ill to attend a formal meeting or disciplinary hearing. An employee may be too sick to work but fit enough to attend such a meeting. An occupational health referral must take place if the employee is certificated as sick by their general practitioner or specialist.

## **7.0 Disciplinary Sanctions**

### **7.1 No case to answer**

This outcome is unlikely if a full and thorough investigation has been undertaken. However, if new evidence comes to light that was not previously available then it may be a possible outcome. In this situation, no further action will be necessary and any reference to disciplinary action is removed from the employee's file.

### **7.2 Written or final written warnings**

- 7.2.1 A written warning will be valid for twelve months and will be time expired after this period, providing there is no repetition of the offence. Management should ensure that the warning is removed from the employee's personal file once the warning is no longer valid.
- 7.2.2 In cases where capability or conduct is at the limit of acceptable standards laid down by Plymouth City Council, the warning may be extended beyond twelve months. If such a decision is taken the employee must be notified in writing of the extension and the

7.2.3 For employees in sensitive posts the warning will be held indefinitely on the employee's personnel file. This is in line with Warner Recommendation 19 which stipulates that departments need to keep a full record of disciplinary offences on a personnel file for the purposes of giving a reference in an appropriate situation.

### **7.3 Dismissal (with notice or pay in lieu of notice)**

7.3.1 In cases of serious misconduct (see Appendix B) or repetition of misconduct the decision may be taken to dismiss with notice.

7.3.2 This sanction may be used in cases where a previous written warning has not resulted in the required level of improvement.

7.3.3 This sanction may require the employee to work their notice period or be paid in lieu of notice, giving an earlier termination date.

7.3.4 No employee will be dismissed without notice for their first offence unless in cases of gross misconduct, dismissals for some other substantial reason (SOSR) or breaches of a statutory enactment.

7.3.5 For employees dismissed on the grounds of redundancy, a separate 'Redundancy avoidance procedure applies and in such cases, the employee can appeal via the appeals process.

### **7.4 Summary dismissal (without notice)**

7.4.1 This sanction will be administered in cases of proven gross misconduct (see Appendix B).

7.4.2 An employee who has been dismissed or summarily dismissed and their appeal against the dismissal has not been upheld, will be added to a list of individuals not to be re-engaged by the Authority. (See Re-employment of Former Plymouth City Council Employees policy for further guidance).

7.4.3 Lists relating to the protection of vulnerable groups will be updated in the light of the decision not to re-engage for example Protection of Vulnerable Adults List (POVA) and Protection of Children Act List (POCAL) in accordance with the Protection of Children Act 1999.

## **8.0 Other remedies**

In addition to the above sanctions (section 7.1 to 7.4), a number of other remedies may be considered by the Disciplinary Chair or Appeal Panel, for example:

- Redeployment that will take effect from the date of the disciplinary confirmation letter.
- Compulsory transfer to another part of the Authority.
- Withhold incremental progression and/or bonus payments.
- Demote an employee within the same job with no protection of wages.
- Repayment of fraudulent claims, in accordance with Plymouth City Council's Financial Regulations.

## **9.0 Disciplinary matters relating to a Trade Union Official**

- 9.1 Normal disciplinary standards apply to the conduct of Trade Union Officials and Learning Representatives. However:
- 9.2 No disciplinary action will take place against a Branch Official, Steward, Learning Representative or Safety representative until a full time official of the Union concerned has been notified.
- 9.3 This does not prejudice management's right to suspend an employee on full pay pending an investigation, if such action is considered appropriate, as suspension is not a disciplinary sanction.

## **10.0 Overlapping disciplinary & grievance issues**

- 10.1 During the disciplinary process an employee may only raise a grievance about disciplinary action when
  - they do not agree that the disciplinary action taken or contemplated, for example dismissal, is due to their conduct or capability; and/or
  - where the employee considers that the disciplinary action constitutes unlawful discrimination.
- 10.2 Where the employee raises a grievance before the disciplinary appeal hearing, the grievance may be discussed in full at the appeal hearing and dealt with at that appeal hearing if possible or appropriate.

- 10.3 Alternatively, the disciplinary process can be suspended for a short period in order to resolve the grievance.
- 10.4 Where the employee raises a grievance after the disciplinary appeal hearing, the full statutory grievance procedure must be followed.
- 10.5 Depending on the nature of the grievance another manager may be brought in to deal with the grievance case independently of the disciplinary case.

**11.0 Notification to professional bodies**

Plymouth City Council is obliged to report to the appropriate statutory or professional body any serious act of misconduct or gross misconduct where appropriate.

**This document should be used in conjunction with the Guidance Notes for the Disciplinary Policy and Procedure that will be available on the intranet.**

**Please seek further guidance or information from your Departmental HR Adviser if necessary**

**This document replaces all previous Plymouth City Council disciplinary policy and procedures that may be in existence.**

**Approved by Personnel Committee: ...../ ...../ ..... [date]**

**Approved by Full Committee: ...../ ...../ ..... [date]**



## APPENDIX A

### RECORD OF DISCIPLINARY ACTION

This form should be completed by the HR Adviser advising on the case and forwarded to the Employee Relations Team, Windsor House. All information will be used for monitoring purposes and held in accordance with the Data Protection Act 1998 and employment legislation.

Section A and F are compulsory. Please complete Sections B-E where applicable.

Action relating to: (Please tick where applicable)	
Section B <input type="checkbox"/> Suspension/ Alternative to Suspension	Section C <input type="checkbox"/> Disciplinary Tribunal
Section D <input type="checkbox"/> Appeal	Section E <input type="checkbox"/> Employment
<b>SECTION A</b>	
Full Name:	Employee Pay No:
Home Address:	
Department:	Section/School:
Job Title:	
Date when Continuous Local Government Service Commenced:	
<b>SECTION B</b>	
Date of Suspension:	
Date and Details of Alternative to Suspension:	

Potential Disciplinary Charge:	MISCONDUCT/GROSS MISCONDUCT
Potential Duration of Suspension or Alternative to Suspension:	
<b>SECTION C</b>	
Date when Investigation Commenced:	
Name of Investigating Officers:	
Nature of Allegations:	
Any part of the allegations relating to:	
Ethnicity:	YES/NO
Bullying/Harassment:	YES/NO
Disability:	YES/NO
Sexual Orientation:	YES/NO
Religion or Belief:	YES/NO
Age:	YES/NO
Other Discrimination (please state)	
Date of Disciplinary Hearing (if applicable):	
Name of those attending Disciplinary Hearing:	
Details of Disciplinary Hearing:	

Decision of Disciplinary Hearing:
<b>SECTION D</b>
Date of Appeal (if applicable):
Outcome of Appeal (if applicable):
Attended by:
<b>SECTION E</b>
Employment Tribunal Details (if applicable):
If applicable, has the Protection of Vulnerable Adults List (POVAL) been advised: YES/NO
Date when advised:
If applicable, has the Protection of Children Act List (POCAL) been advised: YES/NO
Date when advised:
If applicable, has the employee been put on the Undesirables Register: YES/NO
Date when entered:
Any procedural issues that require noting for future reference when up-dating Plymouth City Council Policies and Procedures:

**SECTION F**

**Equal Opportunities and Diversity Monitoring of Employee to be obtained from the HR Database:**

Information obtained in this section will be used for equal opportunities monitoring in accordance with employment legislation.

Date of Birth:

Gender:

Ethnic Origin: (please tick applicable box)

**White:**

British  Irish  Other white background

**Mixed:**

White and Black Caribbean  White and Black African   
White and Asian  Any other mixed background

**Asian or Asian British:**

Indian  Pakistani  Bangladeshi  Other Asian Background

**Black or Black British:**

Caribbean  African  Any other black background

**Chinese or other ethnic group:**

Chinese  Other ethnic group

Does the employee consider him/herself to be a disabled person: YES/NO

If yes, please tick box(es) applicable:

Mobility Impairment

Hearing Impairment

Sight Impairment

Learning Difficulties

Other (please state):

Does this physical or mental impairment have a substantial and long term adverse effect on the employee's ability to carry out normal day to day activities: YES/NO

What is the employee's religion: (please tick applicable box)

- |                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| None                     | Hindu                    | Sikh                     | Christian                |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |                          |
| Jewish                   | Buddhist                 | Muslim                   |                          |

Any other religion or belief: (please state)

## APPENDIX B

### LIST OF EXAMPLES OF POTENTIAL GROSS MISCONDUCT

The public is entitled to demand of a Local Government Officer conduct of the highest professional standard, and public confidence in his or her integrity would be shaken were the least suspicion to arise that they could in any way be influenced by improper motives. Failure to uphold such standards is considered to be potentially gross misconduct.

The following are examples only:

1. Stealing from the Council or a colleague
2. Theft, dishonesty, fraud, misuse of Council property, or deliberate falsification of records
3. Sexual misbehaviour
4. Serious insubordination
5. Deliberate falsification of claims for financial reimbursement with the intention of obtaining from the Council a payment to which the claimant is not entitled
6. Deliberate and/or malicious damage to Council property
7. Assault of any kind by an employee on any person
8. Knowingly breach financial regulations or security
9. Knowingly refuse to follow a reasonable formal legal management instruction
10. Serious negligence which causes unacceptable loss, damage or injury, or acting in a manner dangerous to others
11. Harassment intimidation or bullying of any kind including sexual or racial harassment
12. Publication or distribution of offensive material relating to race, sex or religion
13. Knowingly disclose matter of a confidential nature or break a trust to the disadvantage of the Authority
14. Failure to uphold the highest professional standard by the influence of improper motives
15. Unauthorised entry to computer records and deliberate misuse of the Council's computer resources and telephone services
16. Serious breach of Information Security Policy and Guidelines
17. Obscene or indecent behaviour
18. Serious breach of the Council's Equal Opportunities Policy
19. Serious incapability through alcohol or being under the influence of drugs
20. Serious breaches of the Council's Health & Safety Policy
21. Bringing the Authority into serious disrepute
22. Misuse of the Authority's property or name
23. Breach of confidence (subject to the Authority's Confidential Reporting Code)
24. Failure by an employee to report actual or suspected physical or sexual abuse or other inappropriate behaviour of a child or other vulnerable person by another employee or person.
25. Serious breaches of Professional Codes of Practice

This list is not intended to be exhaustive.

## APPENDIX C

### SEQUENCE TO BE FOLLOWED AT A DISCIPLINARY HEARING

Documentation used at and generated by the disciplinary hearing will be circulated to the Head of Human Resources and all parties in advance of the appeal hearing. This must include a list of the witnesses to be called by both the management and employees side at the Appeal Hearing.

The hearing will be attended by a Chair and Adviser to the Chair, the Employee and their representative if required and a representative from management plus witnesses.

#### Sequence of Events:

- 1. Introductions**  
Including procedural issues to be covered and confirmation of witness lists.
- 2. Management Case**  
The manager or management's representative will put his/her case in the presence of the employee and/or representative and may call witnesses.
- 3. Cross Examination by Employee**  
The employee or representative will have the opportunity to ask questions of the manager and/or witnesses on the evidence given by them.
- 4. Questions from the Chair**  
The Chair and the Head of Human Resources or nominee may ask questions of the manager and/or witnesses.
- 5. Employee Case**  
The employee or representative will put his/her case including any mitigation in the presence of the manager and may call witnesses.
- 6. Cross Examination by Management**  
The manager shall have the opportunity to ask questions of the employee and/or witnesses on the evidence given by them.
- 7. Questions from the Chair**  
The Chair and the Head of Human Resources or nominee may ask questions of the employee and/or witnesses.
- 8. Summing Up**  
The manager and/or adviser and the employee or representative will have an opportunity to sum up their cases if they so wish, the employee or representative statement being last.

**9. Withdrawal**

All parties except the Chair and adviser(s) will withdraw to consider the evidence and decide on an outcome

**10. Recall all parties to clarify points of uncertainty, if necessary**

The Chair may recall the parties to clear points of uncertainty on evidence already given. If recall is necessary, all parties are to return notwithstanding the possibility that only one of them is concerned with the points giving rise to doubt.

**11. Decision and Outcomes**

Notification of the Chair's decision will normally be given verbally to all parties concerned and will always be communicated to the employee with five working days from the date of the disciplinary hearing. This letter should be sent to the employee by special delivery.

**Close**

## APPENDIX D

### SEQUENCE TO BE FOLLOWED AT ALL APPEAL HEARINGS

Documentation used at and generated by the disciplinary hearing will be circulated to the Head of Human Resources and all parties in advance of the appeal hearing. This must include a list of the witnesses to be called by both the management and employees side at the Appeal Hearing.

The hearing will be attended by a Chair, Panel Members, Adviser to the Chair, the Employee and their representative if required and a representative from management plus witnesses.

#### Sequence of Events:

- 1. Introductions**  
Including procedural issues to be covered and confirmation of witness lists
- 2. Employee Case**  
The employee or representative will put their grounds of appeal in the presence of the manager and may call witnesses.
- 3. Cross Examination by Management**  
The manager shall have the opportunity to ask questions of the employee and/or witnesses on the evidence given by them.
- 4. Questions from the Chair**  
The Chair, Panel and the Head of Human Resources or nominee may ask questions of the employee and/or witnesses.
- 5. Management Case**  
The manager or management's representative will put their response to the grounds of appeal in the presence of the employee and/or representative and may call witnesses.
- 6. Cross Examination by Employee**  
The employee or representative will have the opportunity to ask questions of the manager and/or witnesses on the evidence given by them.
- 7. Questions from the Chair**  
The Chair, Panel and the Head of Human Resources or nominee may ask questions of the manager and/or witnesses.

**8. Summing Up**

The manager and/or adviser and the employee or representative will have an opportunity to sum up their cases if they so wish, the employee or representative statement being last.

**9. Withdrawal**

All parties except the Chair, Panel and Adviser will withdraw to consider the evidence and decide on an outcome

**10. Recall all parties to clarify points of uncertainty, if necessary**

The Chair may recall the parties to clear points of uncertainty on evidence already given. If recall is necessary, all parties are to return notwithstanding the possibility that only one of them is concerned with the points giving rise to doubt.

**11. Decision and Outcomes**

Notification of the Chair's decision will normally be given verbally to all parties concerned and will be communicated to the employee in writing as soon as possible. In the case of a decision not to uphold the employee's appeal, reasons will be provided in writing. This letter should be sent to the employee by special delivery.

**Close**