

Disciplinary Procedure

- 1. Purpose and Scope**
- 2. Principles**
- 3. Equality and Diversity Statement**
- 4. Representation**
- 5. Support available to employees**
- 6. The relationship between disciplinary procedure and grievances**
- 7. Informal Action**
- 8. Suspension**
- 9. Special Circumstances**
- 10. Investigation**
- 11. Disciplinary Hearing**
- 12. Appeal**

Appendices

- 1. Examples of misconduct and gross misconduct**
- 2. Format for a Disciplinary Hearing**
- 3. Format for an Appeal hearing**
- 4. Appeal Form**

1. Purpose and Scope

- 1.1 This procedure is designed to ensure all employees of Brighton and Hove City Council achieve and maintain acceptable standards of conduct and will address all disciplinary matters appropriately.
- 1.2 It defines the rights and responsibilities of line managers, trade unions, and employees in undertaking disciplinary action, to ensure a fair, consistent, non-discriminatory, and confidential approach to handling disciplinary matters.
- 1.3 Where a manager believes that an employee's performance is a matter of capability, the Capability Procedure should be used.
- 1.4 In cases of sickness absence, the Attendance Management Procedure should be used. It applies to all employees of the Council except:
 - The Chief Executive
 - Employees covered by the Joint Negotiating Committee for Chief Officers (JNC)
 - Employees who are appointed by the Governing Body to work at a school
 - Employees in their probation period
- 1.5 The Disciplinary Procedure has been reviewed following consultation between the Council and the appropriate recognised trade unions; UNISON and GMB.

2. Principles and Objectives

- 2.1 The primary objective of the Procedure is to help the individual whose conduct gives cause for dissatisfaction to improve to the required standard.
- 2.2 The formal disciplinary policy and procedure is only one part of our wider approach to support staff and provide a great place to work with a focus on trying to resolve issues early and informally wherever possible with action under formal procedures only being taken where it is necessary to do so.
- 2.3 Potential disciplinary matters should be dealt with as a priority and without delay. Although action should not be unnecessarily delayed after the incident has been brought to the manager's attention, this does not mean that expediency should be achieved at the expense of a thorough investigation, proper handling of the matter and fairness to the individual concerned.
- 2.4 Managers should ensure that all employees are aware of the standards of conduct and performance expected of them and understand the likely consequences of failing to meet these. New recruits (including temporary

employees) will be briefed about the current rules and standards as part of their induction programme.

- 2.5 All employees are expected to familiarise themselves with and comply with the relevant rules and standards as set out in the Behaviour Framework [\(link\)](#) and Employees Code of Conduct [\(link\)](#) and with policies and procedures relevant to their role.
- 2.6 Standards may change over time and managers have a duty to ensure that all employees are aware of the current standards concerning their job with regards to performance and behaviour.
- 2.7 Any employee involved with this process is expected to maintain confidentiality at all stages. If an employee breaches confidentiality, they may be subject to separate disciplinary action depending on the nature of the breach.

3. Equality and Diversity Statement

- 3.1 BHCC is committed to equality, creating fair and equitable outcomes for our people and service users, and embraces diversity in our working environment. Our policies, procedures and guidance apply to all employees, whether fixed-term, permanent, part-time or full-time, - inclusive of age, disability, gender, marriage and civil partnership, pregnancy and maternity, 'race', religion or belief, sex and sexual orientation. More information can be found here [BHCC Equality and Inclusion Strategy](#) and in associated strategies: [Accessible City Strategy](#), [Anti-Racism Strategy](#).
- 3.2 If an employee requires any adjustments to attend a meeting remotely or face-to-face they can request these to the hearing manager for consideration. [\(LINK to Workplace adjustments on Wave\)](#)

4. Representation

- 4.1 Employees have a statutory right to be accompanied at any formal hearing under the Procedure which could result in dismissal, or a formal warning being issued.
- 4.2 Before every formal hearing, the employee must be informed that they have a statutory right to be accompanied by either their trade union representative or a colleague who works for the Council. The trade union representative does not need to be from a union recognised by the Council.
- 4.3 An employee does not have a statutory right to be accompanied at any other interview / meeting convened under the Procedure in connection with any disciplinary matter. However, where they want to be represented/accompanied by either a trade union representative or a colleague who works for the Council at such interviews/meetings the request will not be unreasonably refused.

- 4.4 The primary role of the employee's companion is to represent and support the employee. The companion may set out the employee's case, talk with the employee during the hearing, take notes, ask questions when invited to do so by the hearing manager and sum up the employee's case at the end of the hearing. The companion cannot answer questions on behalf of the employee
- 4.5 The primary role of the HR representative is to provide procedural and policy guidance to the hearing manager and/or investigation manager. The HR representative may talk with the manager during the hearing, take notes and address the hearing to seek clarification of the case.
- 4.6 All attendees must comply with the council's Behaviour Framework [\(link\)](#), parties must not disrupt the hearing in any way or act in a way that prevents anyone from explaining their case."

5. Support available to employees

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

6. The relationship between disciplinary procedure and grievances

- 6.1 Where an employee raises a grievance during a disciplinary process, the disciplinary process may or may not be temporarily suspended to deal with the grievance. Where the two are related, it may be more appropriate, for example when the grievance is directly related to the disciplinary issues, to deal with them at the same time within the context of the disciplinary process. Each case will be considered on its merits with advice from Human Resources to ensure that the Council is acting reasonably.

7. Informal Action

- 7.1 Minor occurrences of misconduct may be dealt with informally in the first instance. An initial informal discussion is often all that is required to improve conduct.
- 7.2 If informal action does not bring about an improvement, or the misconduct is considered to be too serious to be classed as minor, the matter will be dealt with under the formal stages of this procedure.

8. Suspension

- 8.1 An employee may be suspended during an investigation. Suspension will be on full pay.

- 8.2 Suspension should only be used where it would be inappropriate for the employee to remain at work, where their presence may inhibit a proper investigation and/or when it is necessary to safeguard both the organisation and the employee from further allegations.
- 8.3 Where appropriate, alternatives to suspension should be considered, such as the employee working in a different role whilst the investigation takes place.
- 8.4 Suspension will only be implemented after careful consideration.
- 8.5 Suspension does not represent disciplinary action and does not involve any prejudgement or assumption of guilt.
- 8.6 Suspension should be kept as brief as possible and reviewed at least every two weeks to decide whether it is still necessary, and the suspended employee must be kept informed of progress.
- 8.7 Heads of Service will nominate those managers who have the authority to suspend an employee from duty. Where possible, advice should be taken from Human Resources before suspending an employee. However, where this has not been possible (e.g. out of hours) then Human Resources must be contacted at the first opportunity.
- 8.8 Any decision to suspend an employee will usually be delivered verbally and will be confirmed in writing including the reason(s) for the suspension. Support during suspension will be outlined in the letter.

9. Specific Circumstances

9.1 Financial Irregularity

Any alleged financial misconduct must be reported to Internal Audit and Counter Fraud who will conduct an independent investigation and produce a report of their findings for management.

9.2 Allegations of Child/Adult Service User Abuse

Safeguarding issues must be reported to the appropriate Safeguarding lead

10. Investigation

- 10.1 Where there are grounds for considering disciplinary action against an employee, it is essential to ensure that there is clear supporting evidence. An investigation will take place initially to gather facts and evidence
- 10.2 The Head of Service will appoint an appropriate investigating manager,

The investigating manager, supported by Human Resources, is responsible for undertaking a thorough, fair and objective investigation. The investigation must be undertaken promptly, especially if the employee under investigation has been suspended.

10.3 The purpose of the investigation is to gather evidence to enable a decision to be taken, with advice from HR, on whether the matter should proceed to a formal hearing under this procedure.

10.4 The investigating manager should:
:

- Review any documents, evidence or policies relevant to the alleged misconduct
- Interview the employee (It may be necessary to interview the employee more than once)
- Interview any appropriate witnesses
- Take notes of all meetings and share with the interviewee to sign and date to confirm they are representative.

Meetings may be recorded with the agreement of all parties.

10.5 As part of the investigation, it is important to assess whether the problem is one of conduct or whether it is a question of the individual's capability to perform the work for which they are employed. If the matter is purely one of capability (such as, the person lacks the skill(s) or has insufficient aptitude), managers have obligations to the employee to provide adequate training and/or supervision and, where appropriate, should apply the Capability Procedure [\(LINK\)](#). If both capability and conduct aspects are involved the advice of HR should be sought.

10.6 At the conclusion of the investigation the investigating manager, with assistance from an HR representative, should assess the evidence collected and decide if

- There is no further action to be taken and the case will not continue to a hearing.
- The situation was minor and can be dealt with informally
- The case will be taken to a formal hearing.

10.7 The employee and their representative will be kept updated on the progress of the investigation and advised of the outcome of the investigation as soon as possible.

10.8 Where it is decided to take the matter to a formal hearing employees will be given full details in writing of the case against them and invited to attend a disciplinary hearing.

- 10.9 Whatever the findings of the investigation, a record of the process followed, and the outcomes reached will be recorded by the HR Advisory Team

11. Disciplinary Hearing

- 11.1 The disciplinary hearing will be chaired by an appropriate hearing manager. A HR representative will be present to advise on process. The hearing manager will be a manager nominated by the Head of service, or Director where appropriate. The hearing manager will have the authority to issue warnings or to dismiss an employee. A note taker may also attend and be an appropriate person selected by the hearing manager.
- 11.2 The employee must be given at least ten working days notice of the hearing. As early as possible, but at least ten working days prior to the hearing, the employee and their representative will be advised of the management case, any witnesses management intend to call and be provided with all written copies of evidence and relevant witness statements at the same time.
- 11.3 Any papers the employee or their representative wishes to present to the hearing should be submitted to the hearing manager at least three working days in advance of the hearing together with a list of any witnesses they intend to call.
- 11.4 Where the employee's chosen representative/ companion is not available at the time proposed for the hearing, the employee can suggest an alternative time and date, so long as it is reasonable and is usually not more than five working days from the original hearing date.
- 11.5 A format for the disciplinary hearing is at Appendix xx

12. Disciplinary Outcomes

- 12.1 No action to be taken
- 12.2 Informal action to be taken which may include training.

12.3 First Written Warning

A first written warning would normally be issued where an improvement has not been achieved through informal action, or for an offence which the disciplinary hearing manager considers sufficiently serious to warrant formal action.

The hearing manager will inform the employee of the outcome of the hearing, in writing, within five working days of the hearing

The first written warning will be kept on record.

A first written warning will cease to be live after six months

12.4 Final Written Warning

Where there is further misconduct before the first written warning is spent or where the misconduct is sufficiently serious to warrant only one written warning, but not so serious as to justify dismissal, a final written warning will normally be issued.

The hearing manager will inform the employee of the outcome of the hearing, in writing, within five working days of the hearing

The final written warning will be kept on record.

A final written warning will cease to be live after twelve months.

12.5 Dismissal

A further breach of conduct by an employee before the final written warning is spent will normally result in dismissal with notice or pay in lieu of notice.

As an alternative to dismissal, consideration can be given to offering demotion (if there is a suitable post and it is appropriate in the circumstances). Demotion may include changes to duties and remuneration. Demotion will only be confirmed with the agreement of the employee, and this will normally be as an alternative to dismissal. Any agreed demotion will be confirmed in writing.

A breach of discipline by an employee which is considered serious enough to be termed an act of gross misconduct will normally result in summary dismissal without notice or pay in lieu of notice.

The hearing manager will inform the employee of the outcome of the hearing, in writing, within five working days of the hearing

The letter of dismissal will be kept on record

12.6 Appeals

An employee may appeal to the person named in the outcome letter against any sanction within five working days of having been informed in writing of the decision.

The appeal must be made in writing on the appeal form at Appendix 4 and should clearly state the ground(s) for the appeal.

The appeal hearing will be arranged as soon as reasonably practicable. Where the employee's chosen representative/companion cannot attend on the appeal hearing date proposed, the employee can offer an alternative time and date so long as it is reasonable, and it falls within five working days beginning with the first working day after the date proposed by the Council.

An appeal against a first or final written warning will be heard by a manager who is senior to the manager who gave the warning.

Appeals against dismissal will be heard by a hearing appeal manager who will be a Corporate Director or Director and who is senior to, and outside of the directorate of, the manager who made the dismissal decision.

An HR representative, who was not involved in the original disciplinary hearing, will be present to advise on process

The manager hearing the appeal may choose to uphold or reject the appeal. Where the appeal has been upheld the manager can reduce the severity of the warning or reinstate the employee in cases of dismissal.

The appeal hearing manager will inform the employee of the decision in writing within five working days of the hearing being held.

A copy of this letter will be kept on record.

The Appeal hearing is the final level of appeal within the Council.

Appendix 1

Examples of misconduct

The following list, although by no means exhaustive, gives examples of misconduct that could lead to a formal disciplinary warning:

- Unsatisfactory timekeeping
- Breaches of confidentiality (deliberate or negligent breaches may be gross misconduct)
- Failure to comply with reasonable work-related requirements or management instructions or lack of care in fulfilling the duties of the post
- Acting in a manner that could reasonably be regarded as rude, impolite or contemptuous (such behaviour may be gross misconduct)
- Conduct that adversely affects either the reputation of the Council or confidence in the employee
- Breach of/or failure/ to observe council policies (in some cases this may be viewed as gross misconduct)

Gross misconduct

The following list, although by no means exhaustive, provides some examples of gross misconduct, which may result in dismissal without notice:

- Assaults and/or Violence towards a fellow employee, service user or member of the public. This includes fighting, physical or serious verbal abuse.
- Corrupt practices, such as receipt of money or goods and accepting or offering bribes.
- Unauthorised or improper use of Council materials, equipment or facilities, including computer systems and internet access.
- Any deliberate attempt to defraud the Council, its employees or the public, including falsification of records, time sheets or expenses.
- Consuming or being under the influence of alcohol or any illegal substance at work.
- Negligent behaviour which seriously threatens the health and safety of a person or has the potential to cause unacceptable loss, damage or injury.
- Malicious damage to the property or the reputation of the Council, clients, other employees or members of the public, including unauthorised disclosure of information.
- Discrimination, bullying, harassment or victimisation (see B&H Policy for more information) ([LINK](#))
- Engaging in politically restricted activities when holding a politically restricted post.



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- Conduct which brings, or has the potential to bring, the Council into disrepute, including criminal offences which make the employee unsuitable for continued employment with the Council.
- Theft or dishonesty, including unauthorised or unlawful possession of property (including intellectual) belonging to the Council, clients or the public.

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Format for a Disciplinary Hearing

The hearing manager will conduct the hearing and will introduce those present and explain why they are there; explain that the purpose of the hearing is to consider whether disciplinary action should be taken in accordance with the Procedure and explain the format for the hearing as follows:-

The investigating manager will state precisely what the allegations are against the employee and outline the Council's case by going through the evidence and calling witnesses where appropriate;

The employee and/or their representative/companion may ask questions of the investigating manager or their witnesses to seek clarification of the Council's case;

The hearing manager and the HR representative may ask questions of the investigating manager or their witnesses, to seek clarification of the Council's case;

The employee or their representative/companion will be given the opportunity to present their case, any mitigation and call witnesses where appropriate, in response to the complaint(s) made against them;

The investigating manager may ask questions of the employee, or their witnesses, to seek clarification of the employee's case;

The hearing manager and the HR representative may ask questions of the employee, or their witnesses, to seek clarification of the employee's case;

The investigating manager will summarise the Council's case;

The employee and/or their representative/companion will summarise their case;

The hearing will be adjourned for the hearing manager to consider all of the information presented at the hearing and make a decision based on facts and evidence, and where in dispute, on balance of probabilities.

If it is necessary to clarify any points of uncertainty on evidence already given, both parties should be recalled to the hearing meeting.

If new information has come to light during the hearing which requires further investigation, a decision on the matter must be deferred and the hearing reconvened at a later date to reconsider the matter;

The employee should be informed that they will receive the decision in writing usually within five working days and will have the right of appeal if the outcome is a disciplinary sanction such as First written warning, final written warning or dismissal.

Having given due and careful consideration of all the evidence presented, the hearing manager will decide on the level of action warranted.

The Hearing manager will prepare the outcome letter and send it to the employee usually within five working days

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Format for an Appeal Hearing

The appeal hearing manager will introduce those present to the employee and explain why they are there. They should explain the purpose of the appeal hearing, how it will be conducted and what powers the appeal hearing manager has;

The employee (or their representative/companion) to state their case and may call witnesses;

The appeal hearing manager, disciplinary hearing manager and the HR Support to the process may ask questions of the employee to seek clarification of the employee's case;

The disciplinary hearing manager will state their case in the presence of the employee and their representative /companion and may call witnesses;

The employee (or their representative/companion) may ask questions of the disciplinary hearing manager or their witnesses to seek clarification of the Council's case;

The appeal hearing manager may ask questions of the disciplinary hearing manager or their witnesses to seek clarification of the Council's case;

The disciplinary hearing manager to summarise their case;

The employee (or their representative/companion) to summarise their case;

The hearing will be adjourned for the appeal hearing manager to consider all of the information presented at the hearing to make a decision based on facts and evidence and where in dispute, on balance of probabilities.

If it is necessary to clarify any points of uncertainty on evidence already given, both parties should be recalled to the appeal hearing meeting.

Having given due and careful consideration of all the evidence presented, the appeal hearing manager will decide if the appeal should be upheld or rejected.

The employee should be informed that they will receive confirmation of the decision in writing within five working days of the hearing meeting;

Disciplinary Appeal Form

EMPLOYEE'S NAME:

POST:

DEPARTMENT:

REPRESENTATIVE'S NAME:

HEARING MANAGER'S NAME AT PREVIOUS STAGE:

Please set out below the grounds of your appeal:

Signature:

Date:

Please send this form to xxxxxxxxxxxxxxxx within five working days of receiving written confirmation of decision.

