

Disciplinary & Dismissal Procedure

Summary

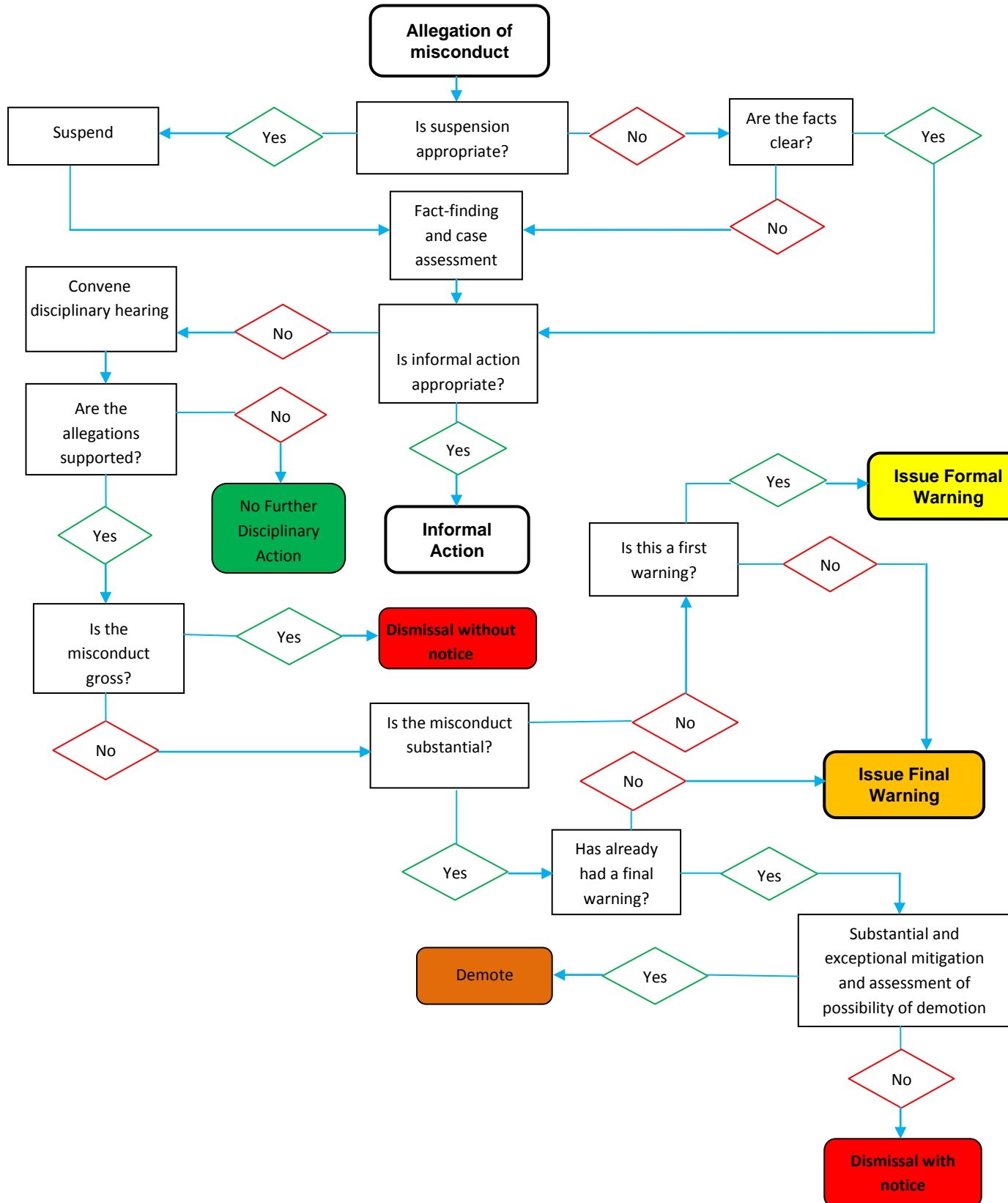
Gloucester City Council expects good standards of Behaviour from all its employees, and where standards of conduct are found to be less than satisfactory it will take action with the aim of restoring an acceptable situation. This Disciplinary and Dismissal Procedure provides a framework for instances where employees are alleged to have fallen short of the required standards of conduct. The aim is to ensure prompt, fair, equitable and consistent treatment for all employees, and a shared, clear understanding of expectations. Managers are responsible for the successful operation of this procedure within the service areas for which they are responsible supported and advised by the HR service as appropriate.

It is based on the principles of the ACAS Code of Practice (No.1) on “Disciplinary and Grievance procedures” and on the Council’s Code of Conduct. The procedure is intended to cover any potential dismissals not explicitly covered by this or any other council policy.

This procedure does not form part of any employee’s contract of employment and is entirely non-contractual. It may be amended, withdrawn, suspended or departed from at the discretion of the Council at any time. Everyone should ensure that they take the time to read and understand the content of this procedure and act in accordance with its aims and objectives. If you need support reading and/or understanding this procedure please speaking with your line manager.

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Misconduct Management Flowchart



NOTE: A right of appeal follows the imposition of any formal disciplinary sanction.

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Who does this procedure apply to?

The policy applies to all Gloucester City Employees except Statutory Officers. The rules relating to suspension and disciplinary action in respect of the Head of Paid Service, Monitoring Officer and Chief Finance Officer are contained in the Council's Constitution. The procedure is governed by statutory regulations.

What is meant by "misconduct"?

Misconduct is an employee's act or failure to act that undermines the good and orderly running of the organisation. It should not be confused with poor performance where an employee wants to perform well but, for some reason can't.

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What is meant by "gross misconduct"?

Gross misconduct is an employee's act or failure to act that is so far from the expected standards of conduct that the employee simply cannot be trusted or allowed to remain an employee of the council. Examples of gross misconduct include, but are not limited to, acts of violence or other abuse, theft or gross insubordination.

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What happens if the employee has a disability or difficulty in understanding English?

If an employee has a difficulty at any stage of the procedure because of a disability or understanding English, he/she should raise this with their manager in the first instances so they may assist as appropriate.

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What does the council expect of its managers?

With respect to this procedure the council expects managers to:

- Carefully select, provide induction and continuously develop their employees
- Make sure employees are clear about the policies, procedures and standards that apply and what is expected of them
- Regularly review the performance of employees and respond to any situations where an employee's conduct is unsatisfactory or otherwise gives cause for concern
- Give employees regular constructive feedback
- Have early discussions with the employee on problems, possible causes and solutions
- Managing employees' conduct informally and formally if required
- Holding and preparing documentation to be presented at conduct meetings/hearings, e.g. details of unsatisfactory conduct.

What does the council expect of its employees

With respect to this procedure the council expects employees to:

- Adhere to the council's Officers' Code of Conduct
- Perform their duties diligently, effectively and to the required standards
- Conduct themselves appropriately in carrying out their duties and in their dealings with others
- Carry out management instructions
- Co-operate with their managers, colleagues and customers to

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What happens if an employee has a warning under another procedure?

ensure the effective delivery of the service

- Respond positively to guidance, direction and constructive criticism from their manager
 - Acts honestly, in good faith and in the best interests of the council and, as appropriate, its partners
 - Maintain satisfactory job performance
 - Be responsible for their own development
 - Raise with their manager and through appropriate management structures any problems that are affecting their work
 - Accept responsibility for their own conduct
- Be flexible and co-operate with changing work requirements

The council has three inter-related procedures through which concerns about an employee's performance may be formally addressed. These policies and procedures cover three areas of employee performance:

- Disciplinary and Dismissal Procedure (conduct)
- Performance Management Capability Procedure
- Sickness and Absence Procedure (this covers both short-term and long-term sickness absence)

There are up to three formal levels of sanction in each procedure:

- First written warning
- Final written warning
- Dismissal with notice (or payment in lieu of notice) or Summary Dismissal in the case of gross misconduct

Under each procedure, a formal warning remains in force for 12 months (or, in exceptional cases only, for a specified longer period). Any "live" warning(s) issues in respect of one procedure may be taken into account in determining the subsequent level of sanction if other concerns arise but in respect of a different performance area. For example, if an employee has a "live" first written warning for poor work performance, they may subsequently receive a final written warning for an unsatisfactory sickness record.

Where this type of situation arises, the formal hearing and any subsequent warning (or dismissal) will be carried out through the Disciplinary and Dismissal Procedure, which operates as the default procedure where the concerns relate to a combination of two or more areas of the employees performance (i.e. a mixture of conduct, capability and/or sickness absence).

In the event that any concerns relate solely to capability or sickness absence, the employee may, having given appropriate consideration to the facts and circumstance, receive a first written warning, final written warning and/or be dismissed under the **Performance Management Capability Procedure** or **Sickness Absence Procedure** (i.e. the matter will not "default" to the Disciplinary and Dismissal Procedure in such circumstances). [Back to top](#)

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How is minor misconduct dealt with?

Managers may deal with conduct below the expected standards informally, making sure that employees understand their misconduct. For example, re-stating the standards of behaviour that are expected, which may also involve training and counselling? Cases of minor misconduct (e.g. recurrent lateness) should be dealt with by the employee's manager without delay. The manager should speak to the employee in private and seek an explanation. The manager should draw their attention to both the required standards of behaviour, any review period and over what timescales along with the potential consequences of continuing to fail to meet these standards.

The manager should make a note of incidents of minor misconduct, including the time and date of the occurrence, and of the fact that the employee has been advised as to their future course of conduct. In exceptional circumstances, a trade union representative or work colleague may attend with the employee although this will be solely at the discretion of the manager.

What happens if an employee achieves the required improvements?

If the employee subsequently achieves the required improvements, then the employee should be informed of the need to maintain that improvement. A copy of the notes should be placed on their personal file. The employee may comment on the content of the note if he or she wishes, and this should also be placed on the personal file.

What happens if during an informal meeting it is clear that the matter is serious?

If during an informal meeting it becomes clear that the matter is more serious than first thought, the meeting should be adjourned and a decision made as to whether the formal stages of the procedure should be involved. Managers should contact HR for advice at this stage. The employee should be kept informed of any decisions and advised of any timescales.

What if misconduct from the same person occurs more than once?

Depending upon the seriousness of the misconduct, a first or subsequent incident may be dealt with informally as above but, if it is felt that the misconduct is more serious or that behavior continues to be below the expected standards, the employee should be referred to the formal disciplinary process.

What if the alleged misconduct is more serious?

If the alleged misconduct is more serious, then the manager should consider a more formal approach to dealing with the situation. The manager should arrange for the relevant facts to be obtained (an investigation) including speaking to both the employee and, as appropriate, other people who, in the view of the manager, may have information relevant to the situation.

The manager should make a note of the allegation(s), including the time and date of the occurrence(s), a summary of events, individuals involved and a record of action taken. If a formal disciplinary sanction is contemplated, then the employee should be invited to a disciplinary hearing.

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What if there is doubt about whether a misconduct incident happened?

It is essential that managers make notes of incidents of misconduct as quickly as possible after they become aware of them, as described above.

If they were not personally witness to the incident or if there is otherwise any doubt about whether an incident took place as described and the manager believes that a disciplinary hearing may be warranted, then it may be appropriate to undertake or commission a fact-finding exercise (an investigation) and case assessment before making any decision.

What if the alleged misconduct may involve harm or risk of harm to children, young people or vulnerable adults?

An allegation may indicate that an employee behaved in a way that:

- Has or may have harmed or abused a child or vulnerable adult;
- Possibly committed a criminal offence against or that is related to a child or vulnerable adult, or;
- Behaved towards a child or vulnerable adult in a way that indicates they are unsuitable to work with children or vulnerable adults.

If the allegation covers any of the above then any immediate further risk must be addressed and then advice must be sought quickly from HR, the local Authority Designated officer for Children's Services 01452 426884 or the Local Authority Head of Safeguarding Adults 01452 427556. The employee should not be informed and the manager should not take any further steps until this advice been obtained

What if the facts are in dispute?

Where the relevant facts are in dispute, then a fact-finding (an investigation) exercise should be undertaken or commissioned before the disciplinary hearing.

In cases where the misconduct is in dispute, the management decision should be on "the balance of probabilities", meaning that, if the convening manager thinks the circumstances suggest it more likely that the events occurred than that they did not, they will proceed on the assumption that they did.

Will an investigation take place?

If it is deemed appropriate to carry out an investigation then an investigating officer will be appointed.

If an investigation is to take place, who will it be undertaken by?

The investigating officer will usually be the employee's manager (or a more senior manager), although the council has the right to appoint any suitable employee, or in exceptional cases, a suitably qualified third party. Employees are required to co-operate with any investigation and, if requested to do so, to attend an investigation meeting. At the manager's discretion, the employee who is subject to the allegation may be accompanied/represented by a trade union representative or work place colleague.

The purpose of the investigation is to establish;

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What is the purpose of an investigation?

- The nature of the alleged misconduct;
- The employee's response;
- Any supporting evidence, and;
- Any other relevant circumstances

The investigating officer will make a recommendation to the manager who commissioned the investigation either that specific allegations should be dealt with at a formal hearing (disciplinary hearing) or that there should be no formal disciplinary action.

Does an employee have to co-operate in the disciplinary process, including any proceedings?

All parties to the proceedings have an obligation to co-operate in ensuring that processes and timescales set out in this procedure are followed without delay. When the handling of the case would be compromised by the need to comply with the timescales and in the event more time is needed, the timescales may be extended. In this case, the employee must be informed in writing and given the reasons for the extension, together with details of any steps to be taken to resolve the disciplinary cases within this period.

What is the purpose of a disciplinary hearing?

The disciplinary hearing will enable the employee to have the allegations restated, hearing the evidence against them, present their own evidence and make representations to management. The manager considering the matter should carefully consider all they have been told and seen during the hearing, and reach a decision about whether the allegation(s) have substance and weight. If they do, the manager hearing the case may impose a disciplinary sanction as described in this procedure.

How much notice does an employee need to be given to be called to a disciplinary hearing?

The employee should be given at least seven calendar days notice of the hearing

Can the employee be represented during the disciplinary process?

Employees are free to seek advice at any time and can be represented by a trade union representative or work place colleague at any formal disciplinary hearing under this procedure held to consider an allegation made against them.

Must an employee attend a disciplinary hearing?

Yes, the employee must make every effort to attend the hearing and their absence will only be considered acceptable in exceptional circumstances.

Is there any flexibility in the procedure?

If the employee does not attend the disciplinary hearing, the hearing may either proceed in their absence or be adjourned, taking into account the reasons for the non-attendance.

What happens if an employee

If non-attendance is due to a medical reason, the employee must

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has a disability or difficulty in understanding English?

inform the hearing officer as soon as possible. Written confirmation together with a Fit Note must be submitted, stating specifically the reasons why the employee is unable to attend the disciplinary hearing (a Fit Note which merely states that the employee is unfit for work is not sufficient; the Fit Note must relate specifically to the employee's ability to attend the disciplinary hearing). The employee may also be referred to Occupational Health to ascertain whether they are fit to attend the hearing.

If it is decided to adjourn the disciplinary hearing, the hearing will be rearranged. If the employee again fails to attend, the hearing will normally go ahead in their absence after considering all the circumstances of the case. Where an employee is unable to attend they may arrange for a representative at the hearing in their absence or make written submissions.

Is there an employee assistance program that can be accessed?

Yes, the Employee Assistance Program (EAP) which is independent of the council and can be contacted for support. Freephone 0800 174319 or visit <http://www.carefirst-lifestyle.co.uk/>. This service is available 24 hours a day, seven days a week. (Username and Password:tba)

How should a disciplinary meeting be recorded

Meetings will only be fully minuted or audio recorded in exceptional or complex cases. In all cases a note will be produced detailing key points in the decision making process. In cases where a formal sanction may be issued the employee must be notified in writing of the outcome of the hearing. Similarly, in formal cases, a note of the hearing should be kept and where dismissal could be involved, considerations should be given to having a note-taker present or using recording equipment. Employees are not permitted to make their own audio recording of a disciplinary meeting without the knowledge of those present.

What are the potential outcomes of a disciplinary hearing?

A disciplinary hearing can have a number of outcomes, including:

1. Dismissal of the allegation;
2. Take action up to but not including a written warning, i.e. informal warning/a letter of caution;
3. Issue of a first written warning;
4. Issue of a final written warning;
5. Increment withheld or reduced by one scale point if at the top of grade;

A combination of 3 to 5 above.

6. When considered appropriate, demotion and/or transfer as alternative to dismissal to a similar or lower graded post if a role is available;
7. Dismissal of the employee, with notice;
8. Dismissal of the employee, without notice (summary dismissal in the case of gross misconduct).

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If misconduct is not considered to have occurred, no further disciplinary action will be taken in this case.

If an allegation is found to be true but there are substantial mitigating circumstances or it is considered to be insufficiently serious to warrant a written warning the disciplinary hearing may apply an informal sanction, such as a reprimand or a note/letter of caution to lie on the employee's personal file together with advice about future conduct.

A warning may be issued which can be taken into account if further acts of misconduct occur. A warning will typically last for 12 months, after which it will not be considered in determining the level of sanction in the event of future misconduct, but may still be considered for performance management and assessment purposes.

Issuing a first warning or a final written warning will also lead to the withholding of the next due annual salary increment

Typically two warnings – “first” and “final” – are issued before dismissal is considered. However, in serious cases it is possible to issue a final warning without having previously issued a “first” warning, or to dismiss an employee who has received a “first” warning but not a “final” warning in cases of gross misconduct.

Increment Withheld or Reduction of One Increment if at the Top of the Employee's Grade

Where the allegation has been upheld, but there are deemed to be mitigating circumstances to justify disciplinary action short of dismissal, this will usually be accompanied with a final written warning.

Demotion and/or Transfer as an Alternative to Dismissal to a Similar or Lower Graded Post

A transfer may be considered appropriate in circumstances where it would not be appropriate to allow the employee to return to their former work area. In cases of gross misconduct, this would only be appropriate if there is substantial mitigation.

Dismissal

A dismissal may be issued with or without notice, depending upon the seriousness of the misconduct. For gross misconduct dismissal will be without either notice or payment of lieu of notice.

Suspension or temporary transfer pending the outcome of an investigation is not a punishment. They are neutral actions to enable an effective management assessment to be undertaken, and to prevent any interference by or with an employee accused of serious or gross misconduct. Any suspension should be as brief as possible, kept under regular review and regular contact kept with the suspended employee by their manager.

When might someone be suspended or temporarily transferred?

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How is gross misconduct handled differently?

When an employee is considered to have committed gross misconduct, they may be summarily dismissed; that is, they may be dismissed at the first disciplinary hearing, even without having previously received a written warning.

Can an employee have an appeal against a sanction imposed at a disciplinary hearing?

An employee may appeal against the reasonableness of a formal disciplinary warning imposed on them as the result of a disciplinary hearing. There is no formal right to appeal against any informal action that may be taken.

An appeal will be heard by another senior manager not previously involved with the case, and the employee can be represented by a workplace colleague or a trade union representative.

Any appeal must be made in writing within 14 calendar days of receiving the warning letter stating the reason(s) for the appeal.

The warning or dismissal will remain in force pending the outcome of the appeal.

If an employee is dismissed, will they be kept as an employee until any appeal is completed?

No, the dismissal is effective from the date given in the dismissal letter. Reinstatement or re-engagement will be considered, together with any appropriate alternative disciplinary sanction, in the event that a dismissal is overturned at appeal.

Are there links with other procedures?

A distinction should be drawn between the need to take action under this procedure and other action which may result in termination of employment including:

- Capability
- Sickness absence
- Redundancy, or the ending of a fixed term contract
- A failed probationary period