

# Disciplinary Procedure

**Version 2**  
**1 July 2004**

## **1. Introduction**

- 1.1** Highland Council, in conjunction with the Trade Unions, recognises that a formal disciplinary procedure will help to promote fairness and equity in the treatment of employees and in the conduct of employee relations. Where possible it aims to encourage improvement in individual conduct and/or performance.
- 1.2** Where an employee's performance or conduct is such as to give rise to serious concern, disciplinary action may be taken by the authority in accordance with the following disciplinary procedures. As the aim of the disciplinary process is to seek improvement in performance or conduct, assistance to enable improvement to occur is essential.
- 1.3** The procedure applies to all Highland Council employees except the Chief Executive and Directors. The term employee includes "workers", i.e. those people who work under a contract of employment, or any other contract to do or perform personally any work or services for the Council, e.g. temporary workers, agency workers.

## **2. Principles**

- 2.1** Disciplinary rules and procedures are necessary for promoting good employment relations as well as fairness and consistency in the treatment of individuals. They enable organisations to influence the conduct of employees and deal with problems of poor performance and attendance thereby assisting organisations to operate effectively. Rules set standards of conduct and performance at work procedures help ensure that the standards are adhered to, and also provide a fair method of dealing with alleged failures to observe them.
- 2.2** All employees should be made aware of the standards of conduct and performance expected of them. In particular they will be made aware of what constitutes gross misconduct, for example, sexual offences, assault or dishonesty. All problems involving minor misconduct and poor performance will be dealt with, at least in the early stages, through the use of informal advice, guidance and counselling. All problems of this nature will be fully discussed and support will be provided with the objective of encouraging and helping employees to improve. Employees will be made aware that support is available at all times even where it has been necessary to take disciplinary action under the Council's procedures.
- 2.3** Where concerns relate to the performance of an individual, the procedures will comply with the Council's Code of Practice on Under Performance. In the case of teachers, the procedures will comply with the GTC(S) code on competence.
- 2.4** If disciplinary actions/sanctions are initiated these will normally be accompanied by appropriate support mechanisms.
- 2.5** No disciplinary action will be taken until the matter has been fully investigated and any decision, thereafter, to impose a disciplinary sanction will not be taken by the person who conducted the initial investigation. In addition any appeal will not be heard by the same person who issued the disciplinary sanction.
- 2.6** Apart from gross misconduct, no employee will be dismissed for the first breach of discipline.
- 2.7** There is a right of appeal against all formal disciplinary sanctions.
- 2.8** No disciplinary action will be initiated against a trade union representative until the matter has been discussed with a full-time official of the trade union concerned.
- 2.9** Where an employee is asked to attend any stage of the disciplinary process, including investigatory meetings, he/she will have the right to be represented.

## **3. Stages in the Procedure**

### **3.1 Counselling**

In order to reduce the possibility of serious disciplinary problems arising it is essential that any incidence of misconduct or failure in performance is dealt with promptly and appropriately.

It may be sufficient at this stage for the line manager to offer counselling to the employee in an attempt to avoid repetition of the problem. This would not be appropriate for serious breaches of discipline, or where there has been a repeated recurrence of a problem within a short period i.e. less than 6 months.

### **3.2 The Investigatory Stage**

3.2.1 In situations where either a complaint has been received or where an employee's conduct or performance has given cause for concern, the Council will appoint an investigating officer. There will have been, prior to the appointment, an initial informal inquiry sufficient to decide if a formal investigation is required. The investigating officer will, if possible, interview all of the parties involved (including the employee in question) and, if appropriate, prepare signed and dated statements from all of these witnesses. The investigating officer will then produce a report which will enable another representative of the Council (not the investigating officer) to decide whether the matter will be further progressed through the formal disciplinary process. The investigating officer will not have any function at a future disciplinary hearing other than presenting the facts of the investigation to that hearing. The employee involved will be advised at an early stage, including confirmation in writing, that a complaint or concern has been lodged, of the nature of any complaint, of the process which will be followed and of the right to be represented.

3.2.2 The investigatory process will be conducted as speedily as possible consistent with the principles of fairness and natural justice.

3.2.3. The employee will be entitled to be represented at all hearings and meetings as part of the disciplinary process including investigatory hearings but excluding investigatory interviews with other individuals. In addition the employee whose conduct or performance has given rise to the investigation will normally be interviewed and must be given a clear indication of the nature and purpose of the investigation in writing and the procedures that will be followed at the interview well in advance of any meeting with the investigating officer.

3.2.4 Once the investigation is completed the employee will be advised of the outcome of the investigation which will also be confirmed in writing to the employee. Where following an investigation no further action is to be taken in terms of the disciplinary procedures then all references to the investigation will be removed from the employee's personal file and destroyed.

3.2.5 Where 'precautionary suspension' is part of the disciplinary procedure the following principles will apply:-

- (a) Precautionary suspensions will only be used in the most serious cases of misconduct or poor performance or where the employee's presence at the normal place of work could prejudice the investigation or where an employee refuses to carry out a lawful and reasonable instruction issued by an authorised person. Consideration must be given to a temporary transfer pending the conclusion of the investigation and any subsequent disciplinary process.
- (b) The precautionary suspension will be on full pay and will not be associated with any assumption of guilt. This is not disciplinary action.
- (c) All precautionary suspensions will be reviewed at agreed regular intervals.

If an investigatory interview or disciplinary hearing is not arranged within 10 working days of the suspension, the employee will be contacted and the situation explained to the employee and thereafter on a two-weekly basis until a disciplinary hearing is convened or the suspension is lifted.

- (d) There is no right of appeal against precautionary suspension. At the time of suspension the employee will surrender any items which relate to their work with the Council, for example, keys, ID cards.

### 3.3 **The Disciplinary Hearing Stage**

3.3.1 A decision to proceed with a disciplinary hearing will be based on the evidence secured during the investigatory stage but will not be taken by the person who conducted the investigation.

3.3.2 Once a decision has been taken to proceed to a disciplinary hearing, the employee will be informed, in writing, about:

- specific details of the allegations
- the date for the hearing
- the procedures to be followed at the hearing
- his/her rights under the disciplinary procedure, and

provided with copies of the evidence that will be used during the disciplinary hearing including any written evidence and the names of any witnesses that will be called. The employee will also provide the Council with similar written evidence that will be led in his or her defence and the names of any witnesses who will be called within a reasonable time before any hearing, and at least 48 hours before the date of the hearing. The employee can have witnesses independent of those summoned by the Council.

- 3.3.3 The Director of Corporate Services, or his/her representative, must be consulted by the designated officer (see below) who will conduct the hearing, prior to any hearing being arranged. A Personnel representative, where appropriate, will be present at a disciplinary hearing and will act as adviser to the designated officer.

Where it is possible that a final written warning will be given or punitive disciplinary action taken (including dismissal), the Director of Corporate Services or his representative must be present at the hearing.

- 3.3.4 The designated officer conducting the disciplinary hearing will not be the person who carried out the initial investigation. At any time during the hearing the designated officer or either party may ask for a recess in the proceedings in order to consider privately any matters raised. The procedure for hearings is given in Appendix 1.

- 3.3.5 The officer(s) who carried out the initial investigation will present the facts of the investigation, including the presentation of any written reports/statements/witnesses.

- 3.3.6 The employee (and/or representative) must be given every opportunity to present his/her case, to provide additional documents for the hearing, to call and question witnesses and to sum up his/her case.

- 3.3.7 At the conclusion of the hearing, the designated officer will either announce his/her decision (to be confirmed in writing thereafter) or indicate that the decision will be communicated in writing within the agreed time limits (see 6.1 below) including the right of appeal against the decision.

- 3.3.8 If it is decided that no disciplinary action is to be taken, all references to the case will be removed from the employee's personal file and destroyed, unless the employee requests otherwise.

## 4. Disciplinary Sanctions

4.1 All disciplinary sanctions will be recorded in writing and will remain in the employee's personal file during the period of currency of the warning (see 6.2 below). In being advised of the disciplinary sanction which is being applied, the employee will be advised also of the improvements which will be expected of them and the availability of appropriate support to allow them to achieve and maintain the improvement.

4.2 The following disciplinary sanctions are available:

(a) **Formal Oral Warning**

This sanction relates to minor breaches of discipline, misconduct or continued poor performance. The oral warning will be confirmed in writing and this written confirmation must include reference to the fact that any further breach of any kind may render the employee open to further disciplinary action.

(b) **Written Warning**

This sanction relates to more serious breaches of discipline, misconduct or continued poor performance or a failure to improve conduct or performance following receipt of a formal oral warning. The employee will be informed that a further breach may result in further disciplinary action.

(c) **Final Written Warning**

This sanction relates to serious breaches of discipline, misconduct or continued poor performance or a failure to improve conduct or performance following receipt of a written warning. The employee will be informed that any further breach of any kind may result in dismissal.

(d) **Punitive Disciplinary Sanctions including dismissal**

(i) The dismissal sanction relates to serious repeated misconduct or poor performance during the currency of a final written warning or for gross misconduct for which no previous warning exists. The employee will be informed in writing of the effective date of dismissal and whether the dismissal is summary (in the case of gross misconduct) or with notice (in the case of repeated misconduct or poor performance).

(ii) The following punitive sanctions are available in conjunction with a final written warning as an alternative to dismissal: demotion, (including a reduction in salary), transfer or suspension of an increment. Where an employee does not agree to the application of the punitive sanction then the Council will have no alternative but to dismiss the employee.

(iii) The actions relating to demotion, transfer or suspension of an increment would be applied in cases which, for mitigating circumstances, fall just short of dismissal.

#### 4.3

Gross misconduct is defined as behaviour of such a nature that the Council is unable to tolerate the continued employment of the employee. The employee's actions have in fact made any further working relationship with the Council impossible.

The following list shows examples of actions which would be considered as gross misconduct but the list should not be considered as exhaustive:

- serious breaches of the Council's policy on the Acceptable Use of Information Systems and Technology
- theft of property belonging to the Council
- theft of property left on Council premises
- serious breaches of the Council's Code of Conduct for Employees
- wilful damage to Council property
- physical assault or threatening behaviour to another employee or to a member of the public while engaged on Council business or outwith normal working hours where this may impact upon the employee's ability to undertake his/her job
- non-disclosure of criminal convictions which were required to be declared on the application form prior to being employed by the Council
- fraud which would involve falsification of expense claims, time sheets (including flexible working hours recording), or any other financial record relating to the Council's finance
- gross breach of Health and Safety Regulations
- failure to disclose details of relevant medical information requested before being employed by the Council
- serious acts of discrimination which breach the Council's Equal Opportunities Policy

A letter confirming the punitive action will detail why the action has been taken and the employee's right of appeal. In cases other than dismissal the letter must advise the employee of the consequences of any other breach of discipline.

#### 4.4

In cases involving performance issues the Council's *Code of Practice on Under Performance* will be followed at all times. Before taking action for dismissal the Director of the Service will ensure that the Code has been followed.

## 5. Designated Officers and Appeals

**5.1** Employees have the right of appeal against all formal disciplinary sanctions imposed by the Council. The table below outlines the appropriate level at which sanctions will be applied and appeals will be heard.

<b>Nature of Sanction</b>	<b>Applied by</b>	<b>Appeal Heard by</b>
Oral warning	Designated officer (including Headteacher)	Service Director or nominee
Written warning	Designated Officer (including Headteacher)	Service Director or nominee
Final written warning	Designated Officer other than Service Director	Service Director
	Service Director	Appeals Sub-Committee for warnings issued by Service Director
Dismissal	Service Director or other appropriate Designated Officer	Appeals Sub-Committee

**5.2** A list of designated post holders able to apply different sanctions and hear appeals will be held by the Director of Corporate Services.

### **5.3 Appeals against Oral, Written and Final Written Warnings**

An employee has the right of appeal against a warning and if exercising this right should submit the appeal in writing to the Service Director within 10 working days of receipt of the confirmation of the issue of the warning. The letter should outline the reasons for the appeal.

The appeal will be heard by a designated officer not involved in the original decision, or Appeals Sub-Committee, if the warning has been issued by the Service Director.

The designated officer will advise the employee in writing of the date of the appeal, normally giving at least 5 working days notice.

Appeals against oral, written and final written warnings will end at this level in the Council.

In exceptional circumstances, where a warning has been issued by an officer who would normally be the designated officer to hold the appeal and there is no other appropriate designated officer to hear the appeal, the appeal will be heard by the Appeals Sub-Committee and will end at this level.

**5.4 Appeals against Punitive Disciplinary Action which may include dismissal**

The appeal shall be heard by the Appeals Sub-Committee and the appeal shall end at this level within the Council.

**5.5 Representation**

At an appeal hearing the employee is entitled to be accompanied by a representative of his/her choosing.

**5.6 Appeals Decision**

The designated officer or Appeals Sub-Committee may confirm, withdraw or amend disciplinary action but cannot impose a more serious form of action than the one originally given.

Following an appeal, if any disciplinary action is withdrawn or modified references to the matter in the employee's personal file will be deleted or amended as appropriate.

## **6. Time Limits**

**6.1** The following time limits will apply:

<b>Aspects of Disciplinary Procedure</b>	<b>Suggested Time Limit (Working Days)</b>
Precautionary suspension	10 working days until and between each review and contact with employee
Notification of decision to proceed to disciplinary hearing (including notice of date of hearing)	10 working days notice (minimum) but could be shorter by agreement in individual cases
Notification of decision following conclusion of disciplinary hearing	5 working days (maximum)
Time limit to lodge appeal	10 working days (maximum) from date of notification of decision of disciplinary hearing
Date of notification of appeal hearing	No later than 20 working days from receipt of notice of appeal
Notification of outcome of appeal hearing	5 working days (maximum)

**6.2** Duration of warnings:

<b>Level of Warning</b>	<b>Time Limit (Months)</b>
Oral warning	6 months
Written warning	9 months
Final written warning	12 months

**6.3** After the appropriate time limit has been reached the warning will be removed from the employee's record and destroyed. In exceptional circumstances a file note may be retained e.g. where the employee is receiving training or some form of support, which relates to the sanction imposed. Such retention would be considered with the job holder and his/her representative.

**6.4** If an appeal is successful and the original disciplinary sanction withdrawn, any written reference will be expunged from the employee's personal file and the employee notified accordingly.

**6.5** Any disciplinary sanction which has been imposed and which relates to a breach of the Council's Child Protection Policy, Financial Regulations, Equalities or Bullying/Harassment Policies can remain on an employee's file for a longer period of time than defined in 6.2 above. This would be in exceptional circumstances, which would be considered with the job holder and his/her representative.

## **7. General Information**

### **7.1 Criminal Offences**

An employee will not be automatically dismissed or otherwise disciplined as a result of being charged or convicted of a criminal offence.

However, where it is thought that the employee's action may warrant disciplinary action being taken, an appropriate officer will fully investigate the facts as far as possible.

If the investigation indicates that prompt attention can be given to the matter the designated officer need not await the outcome of criminal investigation or prosecution before taking a fair and reasonable decision on the matter. However, the matter must first be discussed with the Director of Corporate Services or his representative.

## **7.2 Alcohol and Drug Abuse**

The chronic abuse of alcohol is recognised as an area of health and social concern which can definitely and repeatedly interfere with an employee's health, conduct and work performance. Where any disciplinary action is being considered, and there is an indication that the underlying cause of a particular situation may be the regular abuse of alcohol, the Council's policy on alcohol abuse must be adhered to. Where the regular abuse of drugs is a factor, the principles of the Council's policy on alcohol abuse will be followed.

## **7.3 Trade Union Officials**

Where disciplinary action is proposed against an employee holding trade union office the designated officer must contact the Director of Corporate Services, or his representative, prior to convening a disciplinary hearing.

No disciplinary action will be taken against an employee holding trade union office until the circumstances of the case have been discussed with a full-time trade union official of the trade union involved through the Director of Corporate Services or his representative.

## **7.4 Representation**

An employee has the right to be accompanied by a Trade Union representative or any other representative of their choice, who may speak on their behalf. While it is the responsibility of the employee to arrange the attendance of a representative, they must be reminded of this right.

## **7.5 Appeal to an Employment Tribunal**

Nothing in this disciplinary procedure impinges on an employee's statutory rights to appeal to an employment tribunal in appropriate circumstances.

## **7.6 Confidentiality of Records**

The Council will treat records arising from the disciplinary process as confidential, though copies of such records, e.g. investigating officer's request, witness statements, will be made available to the employee concerned, and to officers or members involved in the disciplinary and appeals process.

# Appendix 1

## Disciplinary Hearing Procedure

1. The designated (disciplining) officer commences the hearing by introducing those present and confirms that the hearing is being conducted in accordance with the Council's disciplinary procedures.
2. The designated officer confirms the capacity of the person accompanying the employee and confirms that the investigating officer will present the facts of the investigation for the employer. The advisory role of the personnel adviser will also be confirmed.
3. The designated officer confirms the process to be followed.
4. The investigating officer puts the case in the presence of the employee and his/her representative, including calling of witnesses.
5. The employee or representative can ask questions of the investigating officer and any witnesses called.
6. The employee or representative will put the case for the employee in the presence of the investigating officer including calling of witnesses.
7. The investigating officer can ask questions of the employee or the representative and witnesses called.
8. The designated officer and Personnel Adviser can ask questions of any party at any stage.
9. Witnesses will leave the room after questioning but remain available.
10. Both investigating officer and employee or representative will sum up, introducing no new material, but can include any plea for mitigation.
11. The hearing will be adjourned to let the designated officer, in consultation with the Personnel Adviser, consider the information submitted with a view to reaching a decision. If further information needs to be obtained, then the disciplinary hearing can be adjourned to be reconvened on a date, time and place as appropriate.
12. Where possible, the decision will be communicated verbally to the employee but will be confirmed in writing. This will include information on the right of appeal and how this is activated.