[Mole Valley logo image](http://www.molevalley.gov.uk/index.cfm?articleid=2189)

**DISCIPLINARY POLICY AND PROCEDURE**

Disciplinary Policy and Procedure

**Contents list**

1. [Introduction 3](#_1._Introduction)
2. [Application 3](#_2._Application)
3. [When informal action will be taken 4](#_3.__)
4. [Roles and Responsibilities 4](#_3._Grievance_raised)
5. [Disciplinary Process Formal Stage 5](#_5._Disciplinary_Process_1)
   1. [Preliminary Enquiry 5](#_5.1_Preliminary_Enquiry)
   2. [Short Disciplinary procedure 5](#_5.2_Short_Disciplinary)
   3. [Investigation 6](#_5.3_Investigation)
   4. [Witnesses 6](#_5.4_Witnesses)
   5. [Safeguarding or Fraud 7](#_5.5_Safeguarding,_Fraud)
   6. [Suspension 7](#_5.6_Suspension)
   7. [Sickness absence 8](#_5.7_Sickness_absence)
6. [Disciplinary Hearing 8](#_6._Disciplinary_Hearing) 
   1. [Process to be followed at a disciplinary hearing 10](#_6.1_Process_to)
7. [Decision Making and Potential Sanctions 11](#_7._Decision_making)
   1. [First Written Warning 11](#_7.1_First_Written)
   2. [Final Written Warning 11](#_7.2_Final_Written)
   3. [Dismissal 12](#_7.3_Dismissal)
   4. [Action short of Dismissal 12](#_7.4_Action_short_1)
   5. [Other considerations 12](#_7.5_Other_considerations_1)
8. [Grievance raised by an employee during a disciplinary procedure 13](#_8._Grievance_raised)
9. [Appeals 13](#_9.__Appeals)
   1. [Purpose 13](#_9.1_Purpose)
   2. [Appeal Hearing 14](#_9.2_Appeal_Hearing)
   3. [Outcome 14](#_9.3_Outcome)
10. [Employee support 15](#_9._Employee_support)

[Appendix 1](#Appendix) Examples of Disciplinary & Gross Misconduct Offences 16

[Appendix 2 Posts with alternative Disciplinary Procedure 1](#_Appendix_2)8

[Appendix 3 – Disciplinary Appeal Form 19](#_Appendix_3)

# 1. Introduction

The purpose of this procedure is to ensure that all employees understand and achieve and maintain expected standards of conduct and act in line with corporate values during the course of their work. It is designed to ensure that all employees are treated fairly and consistently.

The principles which underpin the disciplinary procedure are as follows:

* No formal action will be taken against an employee until the case has been investigated and facts established.
* The employee will be advised of the nature of the complaint against them as soon as is reasonably practicable and will be given the opportunity to state their case before any decision is made.
* The employee will have the right to be accompanied at formal meetings by a trade union representative, or a work colleague not acting in a legal capacity.
* There is no statutory right to be accompanied at investigation meetings but efforts will be made to accommodate this where it does not impede the progress of the investigation.
* No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be summary dismissal without notice. The employee will have been made aware of the potential for dismissal prior to the meeting.
* An employee can appeal against the disciplinary penalty imposed. The extent of the appeal and re-consideration of evidence already provided will depend on the circumstances of the case.
* The procedure may be implemented at any stage depending on the level of seriousness of the alleged misconduct.
* An employee will not necessarily be dismissed because of their conviction for a criminal offence. The employee’s position will be considered according to the circumstances.
* Acquittal of a criminal charge will not in itself preclude disciplinary action, where such action would otherwise be appropriate. Similarly, it will not always be possible to await the outcome of criminal charges before implementing the disciplinary policy.
* Suspension from duties is a neutral act and not a disciplinary sanction in itself.
* Managers and employees will avoid unnecessary delays and seek to conclude a case within a reasonable timescale.
* A decision will be reached on the basis of evidence available at the time.
* In situations where complaints are initially investigated following or through a customer complaints process or an employee grievance and potential misconduct by an individual employee is identified, further investigation may be necessary under the disciplinary procedure. Depending on the investigation findings or the seriousness of the complaint, this may result in moving directly to the formal stage of the disciplinary procedure.

# 2. Application

This procedure applies to matters of conduct only. Where the concerns are around performance or health, the Council’s Capability Procedure should be used.

The Disciplinary Policy and Procedure and Disciplinary offences (Appendix 1) apply to all employees of Mole Valley District Council. There are however additional considerations in relation to the Chief Executive, the Section 151 Officer and the Monitoring Officer, outlined in Appendix 2.

This policy does not apply to self-employed contractors, workers and agency workers.

The provisions in this policy are non-contractual and may be updated from time to time. Whilst it will normally be followed, other than under the exceptions noted below, there may be situations where the format can be altered, in accordance with HR advice on a fair dismissal process.

The policy specifically does not apply to:

* Employees whose service is terminated during their probationary service (please see the Probation Policy for further advice).
* Any employee who takes action which clearly indicates that he/she has terminated his/her own Contract of Employment with the Council

# 3. When informal action will be taken

Sometimes a manager will choose to discuss a disciplinary issue informally with an employee instead of taking formal action. In that case, there may be an informal warning after discussion.

For example, when minor breaches of discipline occur, the manager will discuss the conduct or standard required in the future, and the potential consequences of a further breach of discipline. This should be confirmed in writing in an informal warning but is deemed part of the normal supervisory process and is not part of the formal disciplinary procedure.

The informal warning will include details of the concerns/issue, standards required and the expectation that there will be no repeat of the misconduct. It will also inform the employee that failure to meet the required standards of conduct may result in further action being undertaken under the formal stages of the disciplinary procedure.

If a discussion fails to resolve the problem, or that approach is considered inappropriate in the circumstances, the formal procedure will be considered.

# 4. Roles and Responsibilities

**SLT lead**

The relevant SLT service lead will have overall responsibility for the effective management and discipline of their staff although day to day responsibility may be delegated to managers in their service. The SLT lead/nominated manager will appoint the Investigating Manager and, as Commissioning Manager, will receive the report from the Investigating Manager. They will decide whether it is appropriate to progress to a disciplinary hearing. If so, they may choose to chair the disciplinary hearing or appoint an alternative Hearing Chair.

Where the SLT lead is the subject of the disciplinary policy (or under investigation) either the Chief Executive or Deputy Chief Executive will undertake this function or delegate to an alternative SLT lead where appropriate. (Any subsequent references in this policy to SLT lead will therefore be altered to this effect).

**Investigating Manager**

The line manager of the employee in question will usually be responsible for conducting preliminary enquiries and full investigations although in extenuating circumstances, an independent manager may be appointed to investigate. The Investigating Manager will submit their report to the Commissioning Manager and present the case at any consequent disciplinary hearing.

**Hearing Chair**

The Hearing Chair will arrange and manage the hearing in conjunction with HR. The Hearing Chair will preside at the hearing and make a decision regarding the outcome of the case.

**HR Adviser**

The role of the HR adviser is to provide advice and guidance on matters such as process and precedent. It is non-decision making.

# 

# 5. Disciplinary Process Formal Stage

## 5.1 Preliminary Enquiry

Preliminary enquiries are an opportunity to discover whether a full disciplinary investigation is needed. The purpose is to identify whether there is enough evidence to indicate that some misconduct may have taken place. If it appears that there may be some substance to the allegation the next step would be to discuss the matter directly with the employee to see what explanation they may offer.

## 5.2 Short Disciplinary Procedure

There are situations where although issues need to be dealt with more formally than through normal supervision or through the informal process outlined above, they are relatively straightforward, for example where the employee has admitted the misdemeanour and where the issue is not serious enough to be considered gross misconduct. Managers may decide to use the short disciplinary procedure to resolve these more quickly.

Under the short disciplinary procedure, there will be no requirement to appoint a separate chair and the appropriate line manager will be able to conduct any necessary investigation and set up a meeting to consider issuing a “written warning under the short disciplinary procedure” to the employee.

Timeframes, entitlement to be accompanied and written notification of formal meeting(s) apply, as at section 6.

This meeting may be the only meeting the employee is invited to attend and there will not be separate meetings for the disciplinary and investigation stages. The employee can present any mitigating factors.

Managers are advised to contact HR before embarking on a short disciplinary process. In some situations, it may be appropriate for HR to be involved in the process, depending on all the circumstances, for advice and support purposes.

A copy of the written warning will be kept on the employee’s file, but it will normally be considered spent after 6 months, subject to satisfactory conduct.

## 

## 5.3 Investigation

Preliminary enquiries may reveal the need for a formal investigation to be conducted. If so, the employee should be advised as early as possible that an allegation has been made that needs to be investigated under the disciplinary policy.

The employee’s line manager will normally undertake the formal disciplinary investigation. Where this is not appropriate, due to the nature of the allegations or the complexity of the case, the Commissioning Manager may appoint an independent Investigating Manager.

The Investigating Manager will be responsible for co-ordinating and undertaking the investigation and producing a final report summarising their findings. They will establish the facts of the case and obtain the relevant facts and information by meeting the employee who is under investigation, any witnesses, and other parties as appropriate.

Investigations should be completed as soon as practicable and within 15 working days where possible. Employees should be informed in writing where an extension to investigation timeframes is likely.

The report will be submitted to the Commissioning Manager to decide whether a formal disciplinary hearing should be convened.

## 5.4 Witnesses

All employees are expected to co-operate in attending investigation interviews and providing statements or other information if asked. Witnesses interviewed during investigations do not have the right to be accompanied by a work colleague or trade union representative though in extenuating circumstances it may be a reasonable adjustment for disability reasons.

Witnesses should be informed about the format any subsequent hearing will take if expected to participate and how they may be questioned by both parties. Participation in the proceedings, and any details of evidence submitted or heard will be on a strictly confidential basis and must not be discussed with anybody who does not have a legitimate ‘need to know’. To act otherwise than in accordance with the above may be treated as a disciplinary offence.

It is not the Council’s practice to ask children, vulnerable adults or service users to be witnesses at internal disciplinary hearings. However, where the Chair is satisfied that their evidence is required in order to make an effective decision, bearing in mind proportionality, relevance to the case, impact on the decision, or likely sanction they may be asked to make a written statement and a suitably skilled person may be asked to represent their interests on their behalf.

## 5.5 Safeguarding, Fraud or influencing other witnesses

If the investigation involves safeguarding issues and there is a reasonably held belief that early knowledge of an investigation might result in a risk to a vulnerable child or adult, the employee must be informed of the investigation as soon as possible, but with the safety of all concerned as the main consideration.

A further example may be in cases of suspected fraud where there are grounds to consider that there is a risk that the employee might remove or tamper with evidence or influence other witnesses.

In such cases, the employee should only be informed of the allegation when the element of risk has been removed or reduced to an acceptable level.

In certain circumstances, employees may be suspended during the period of the investigation and until any hearing has taken place.

## 

## 5.6 Suspension

An employee may be suspended on full contractual pay whilst an investigation is conducted if:

The investigating manager believes that such a suspension would facilitate the investigation, or without such a suspension the investigation could be compromised. A risk assessment should be undertaken to inform suspension decisions[[1]](#footnote-1); and/or;

The allegations, if proven, are likely to be viewed as gross misconduct potentially resulting in the employee’s dismissal and there is significant risk to service users, employees, council resources or property if they remain at work.

It should be noted however, that if an employee is not suspended, this does not mean that the alleged behaviour cannot be considered as gross misconduct if appropriate.

It is emphasised that suspension is a neutral act and not, in itself, a form of disciplinary action, nor is it any indication that the allegations have been proven. As an alternative to suspension, temporary redeployment to other duties may be considered.

The decision to suspend an employee must be made in consultation with the SLT Lead and HR. Where either may not be available immediately, managers are advised to send employees away from the place of work by granting special leave until it is possible to assess the appropriateness of suspension.

Employees who are suspended from duty should be advised to seek the support of their trade union representative or a work colleague. Their line manager will normally maintain contact with the employee during suspension and the employee will also be advised of the contact details for the Employee Assistance scheme.

The circumstances and conditions of their suspension will be confirmed in writing to the employee and the suspension will be reviewed at regular intervals by the SLT Lead, updating the risk assessment as required.

If an employee is suspended, they must stay away from work, not visit any MVDC premises or make contact with staff, clients, suppliers or contractors (unless authorised in writing).

If the employee wants to contact somebody specifically to ask them to be a witness, or to accompany them at a meeting under this policy, then this is permissible.

During a period of suspension an employee must be ready, willing and able to work and should not take annual leave or travel without prior authority to do so. If pre-approved holidays fall during a period of suspension, they will still count as holiday leave and will be deducted from holiday entitlement as normal.

## 5.7 Sickness absence

If an employee is unable to attend a disciplinary hearing due to sickness, a new date will be set for the hearing. Depending on all the circumstances, the employee may be referred for occupational health advice in order to establish fitness to participate in hearings. Alternative ways of conducting the hearing may be reviewed, for example a virtual meeting (using software such as Teams or Zoom), conducting the hearing by phone, inviting the employee to send written submissions or a colleague to attend on their behalf.

# 

# 6. Disciplinary Hearing

If the Commissioning Manager decides that there is a case to answer, a formal disciplinary hearing will be arranged by the Hearing Chair, supported by HR.

The hearing will be chaired by a manager not previously directly involved in the investigation and they will be supported by a member of the HR team.

The Hearing Chair will be responsible for deciding if the allegations have been proven and the level of disciplinary sanction, if any.

The Investigating Manager will be responsible for presenting the management case, based on their investigation report.

The employee will normally be given 5 working days’ written notice of the hearing.

They will be informed of:

* The purpose of the hearing
* When and where the hearing will take place
* The details of the allegation of misconduct
* The right to be represented by a work colleague or union rep
* The possible consequences

Copies of any witness statement and other relevant documents will be included.

The employee and their representative will normally receive the management statement of case 5 working days before the hearing. The statement of case will outline the allegations, evidence from the investigation and any supporting witness statements, if applicable. If the employee wishes to submit a written response or to refer to written evidence at the hearing, they should submit documentation to the Hearing Chair at least 3 full working days before the hearing.

If the employee is unable to attend the date arranged because of circumstances beyond their control, they must inform their line manager or HR as soon as possible to request a postponement. A postponement of up to 5 working days will generally be allowed providing the reasons for postponement are acceptable. In exceptional circumstances, longer than 5 days may be considered. In all circumstances, unreasonable delay will not be permitted. If there is an unacceptable delay because of the non-availability of the chosen companion, the employee will normally be expected to arrange for an alternative trade union representative or work colleague to attend.

A hearing will only be re-scheduled once unless there are very good reasons to justify a second re-scheduling. If there is a failure to attend without any request for postponement, or any explanation given, or if the employee is persistently unable or unwilling to attend without good cause, then the hearing may be conducted in the employee’s absence and a decision made on the evidence available. The employee’s representative may attend in such circumstances and make representation on their behalf. The employee may also submit a written statement for consideration in their absence.

The trade union representative or work colleague will be allowed to address the hearing to put the employee’s case and to sum up the case on the employee’s behalf if preferred. The trade union representative or work colleague may not answer questions on the employee’s behalf or try to prevent questions being asked or arguments being outlined by the Investigation Manager, HR, Hearing Chair or other relevant parties.

Both the Investigating Manager and the employee will have the right to call witnesses providing these have been notified in advance of the meeting. The employee and their representative are responsible for ensuring both the availability and attendance of their witnesses at the hearing.

## 6.1 Process to be followed at a disciplinary hearing

The procedure at the hearing will be:

* The Hearing Chair will confirm the allegation(s) and explain that the purpose of the hearing is to consider whether disciplinary action should be taken in accordance with the Council’s disciplinary procedure.
* The Investigating Manager will be asked to present the management case, introducing appropriate documentary evidence and calling witnesses. The employee or their representative will have the opportunity to question each witness.
* The Hearing Chair and HR will have the opportunity to ask questions of each witness.
* Once the Investigating Manager has completed their presentation of the evidence, the employee or their representative will have the opportunity to ask questions of the Investigating Manager as will the Hearing Chair and HR.
* The employee or their representative will be asked to present their case, introducing such documentary evidence and calling any witnesses.
* The Hearing Chair, Investigating Manager and HR will have the opportunity to question each witness.
* The Investigating Manager will have the opportunity to ask questions of the employee as will the Hearing Chair and HR. The employee’s representative may not respond to questions on the employee’s behalf.
* The Hearing Chair will ask the employee if they wish to submit any mitigation i.e. any particular circumstances which they would like to be taken into account.
* The Hearing Chair will adjourn the hearing to consider the case in private.
* The Hearing Chair will recall the parties and announce their decision which will normally be confirmed in writing within 5 working days. However, there may be a need to adjourn to consider the evidence. In such cases, the Hearing Chair should give an indicative timeframe as to when a decision may be reached and confirmed in writing. This will normally be no later than 5 working days from the date of the hearing other than in exceptional circumstances.
* The employee will be advised of their right to appeal and the procedure to be followed.

Non verbatim notes may be taken at the hearing by panel members to support their decision making. Each party may take notes for their own purposes, therefore there is no provision for a copy of these notes to be provided to the employee who may of course take their own notes.

An electronic recording may be made of the hearing. If so, this will be discussed in advance and will not be done without the employee’s knowledge.

Covert recording is unlikely to be of good quality and is not permitted as this suggests lack of trust in the process or the managers who are conducting it and will be considered as a disciplinary matter. In serious cases, it may be considered gross misconduct.

# 7. Decision making and potential sanctions

In reaching a decision, the Hearing Chair will need to consider whether the allegations are found to have been proven or not on the balance of probabilities, i.e., more likely to have occurred than not. It is not necessary to prove a case beyond all reasonable doubt in an employment setting. On occasion the Hearing Chair will need to decide between conflicting recollections or opinions where there is no corroboration or proof.

Having reached a decision on each of the allegations, the Hearing Chair will need to consider the following points in determining an appropriate sanction, in conjunction with advice and support from HR:

• The sanctions imposed in any comparable cases

• The employee’s disciplinary record

• Any mitigating circumstances

• Whether the sanction is reasonable and proportionate

Sometimes it may be possible to draw a distinction between similar situations that have arisen and been sanctioned before. If so, and it is considered material in permitting a lesser or higher sanction for the case under consideration, the Hearing Chair will note the grounds for distinguishing the current case.

Cases may enter any of the disciplinary stages mentioned below depending on the severity, frequency and general circumstances of the issue in question. There is no obligation to follow the stages sequentially. The issues need not be of the same nature for progression to the next level of sanction. At any time it may be found that there is no case to answer

Possible sanctions which can be considered according to the nature of the misconduct are:

## 7.1 First Written Warning

Where a warning has been given, the letter will detail the nature of the misconduct, the rationale for action taken and will also confirm that any further acts of misconduct could result in further disciplinary action. The employee will also be informed of their right of appeal.

A copy of this First Written Warning, and of any investigation report, will be retained on the employee’s file and will generally be disregarded for disciplinary purposes after 12 months from the date of notification of the decision, subject to satisfactory conduct.

## 7.2 Final Written Warning

If the hearing has considered further misconduct following the issue of a written warning (whilst it is still ‘live’), or if the misconduct is sufficiently serious to warrant written warning, but insufficiently serious to justify dismissal, a final written warning may be given to the employee. This will give details of the allegation and warn that dismissal may result if there is no satisfactory improvement. It will advise of the right of appeal.

A copy of this final written warning, and of the investigation report, will be kept on the employee’s file but will generally be disregarded for disciplinary purposes after 18 months subject to satisfactory conduct. A final written warning may also be issued as an action short of dismissal (see below).

## 7.3 Dismissal

Dismissal may be appropriate if the Hearing Chair finds that there is sufficient evidence of further misconduct despite previous disciplinary action. Written confirmation of the decision to dismiss, giving reasons, will be provided following a full disciplinary hearing as described above and dismissal, except for summary dismissal, will be with full contractual notice or payment in lieu of notice.

If an employee is dismissed for an act of gross misconduct, the result will normally be summary dismissal without notice or payment in lieu of notice. In certain circumstances, the Chair may consider there to be sufficient mitigation to warrant payment of notice whilst still considering the act(s) or negligence to constitute gross misconduct.

## 

## 7.4 Action short of dismissal

Sometimes the Hearing Chair may consider other actions short of dismissal to be appropriate. These may include deploying the employee to a different role, demoting the employee, and/or extending their final written warning period to provide further time to review how the employee responds. Redeployment or demotion may result in a reduction in pay. If the employee does not agree to demotion or redeployment, dismissal will be the result.

Where it is not possible to identify a suitable post within an acceptable timeframe (4 weeks may be considered the norm in these circumstances) then the dismissal will still proceed.

## 

## 7.5 Other considerations

If an employee commits a very similar offence for which a warning has already been issued, the earlier issue can be considered for the new disciplinary procedure even if the warning for the first offence has expired, providing it is reasonable to do so.

Other sanctions that may be imposed include financial reimbursement (where there has been a financial loss to the Council that is attributable to the employee’s misdemeanour), withholding salary progression, pay rises, promotion or job transfer opportunities, for a defined period.

Where a serious safeguarding concern has been raised it may be that the relevant warning or the existence of a previous investigation should never be disregarded for disciplinary purposes.

# 8. Grievance raised by employee during a Disciplinary procedure

Where an employee raises a grievance during a disciplinary process, the disciplinary process will not be put on hold unless there is a requirement to resolve the grievance first.

If the grievance is related to the issues raised in the disciplinary, or concerning the disciplinary process itself, then these concerns will be considered during the course of the disciplinary procedure either during the investigation, at a hearing (which could become a Multi-Purpose Hearing) or on appeal.

Where the concerns raised in the grievance are completely separate then the two processes will continue alongside each other.

# 9. Appeals

Employees have the right to appeal against action taken under the formal stages of the disciplinary procedure. Employees who wish to exercise their right of appeal must do so in writing, using the Appeal Form set out at Appendix 3. The appeal should be made to the Disciplinary Hearing Chair (unless a different name is confirmed in the decision letter to the employee) within 10 working days of receipt of their disciplinary outcome. The Disciplinary Hearing Chair will make arrangements for appointment of an Appeal Hearing Chair for consideration of the appeal. HR should be copied into the appeal and the hearing arrangements.

## 9.1 Purpose

The purpose of the appeal is to review the decision taken by the disciplinary panel and not to re-hear the case. The employee should set out clearly the grounds for their appeal, including provision of relevant documentary evidence and how they would like the matter resolved. Grounds for appeal should relate to one or more of the following:

* **The procedure** an appeal can be lodged where an employee can demonstrate that the disciplinary procedure was applied unfairly or incorrectly.
* **The facts** an appeal can be lodged where the employee can demonstrate that the facts considered were not relevant; that the facts were not accurate; or where there are new facts/evidence which need to be considered that have come to light subsequent to the hearing.
* **The decision** an appeal can be lodged where the employee can demonstrate that the sanction received is disproportionate to the charges found taking into account the evidence/mitigating circumstances presented or where it is disproportionate to the outcome in other similar cases.

## 9.2 Appeal Hearing

The appointed Appeal Hearing Chair will review the points of appeal and determine if there is a case to answer. Where it is determined that there is no case to answer, the Appeal Hearing Chair will set out the reasons to the employee in writing. Where it is determined that there is a case to answer, an Appeal Hearing will be convened.

The Appeal Hearing Chair should arrange a meeting within 10 working days of receipt of the appeal, giving the employee 5 working days’ notice of the hearing (where it is not possible to give this notice, the employee will be advised of the reasons in writing and a reasonable alternative timeframe set).

The hearing may be held in person or virtually. Where a hearing cannot be convened within a reasonable timeframe (e.g. due to absence) or a hearing is not deemed to be conducive to the timely and successful conclusion of the appeal, the Appeal Hearing Chair may opt to conduct any necessary investigation and deliver their findings in writing. The most suitable approach will be determined by the Appeal Hearing Chair depending on the needs of the case, and will be outlined to the employee in writing.

The employee is entitled to be accompanied/supported by a trade union representative or a workplace colleague. The Appeal Hearing Chair will be supported by a member of the HR team.

## 9.3 Outcome

The Appeal Hearing Chair will consider the grounds put forward for appeal and assess whether or not the conclusion reached in the Disciplinary Hearing was appropriate. It should not be a rehearing of the original process, but rather a consideration of the rationale for being dissatisfied with the outcome. The Appeal Hearing Chair may wish to speak to the Disciplinary Hearing Chair or relevant witnesses, where clarity over decisions made during the original hearing is required. They may invite them to attend the Appeal Hearing where this supports their considerations.

Where the reason for the appeal may impact the actions from the disciplinary hearing outcome, these actions need to be put on hold until the appeal has reached an outcome. The Appeal Hearing Chair is responsible for ensuring this i.e. that any actions from the disciplinary hearing outcome are put on hold where necessary.

The decision of the Appeal Hearing Chair as to whether the points of appeal are upheld or not will begiven verbally to the two sides at the end of the hearing and/or provided in writing, normally within 5 working days. If it is not possible to respond within 5 working days because, for example, some investigatory work needs to be completed, the manager will give the employee a written explanation of the reason for the delay and a reasonable time frame for a response.

Where there are several elements to the disciplinary appeal, a decision on whether or not to uphold each element should be made and communicated in the written response. In addition to stating whether the appeal is upheld, the written response should also set out what, if any, actions are required.

The decision of the Appeal Hearing Chair is final and there is no further right of appeal.

# 10. Employee support

All employees subject to disciplinary proceedings should be offered the support of the Employee Assistance Programme and are advised to contact a trade union representative.

Employers have a duty of care to all staff particularly those who are suspended from duty and it may be appropriate to appoint someone outside of the disciplinary process who can act as their support and point of contact with the authority.

Throughout this process, care should be taken to ensure that the provisions of the Equality Act 2010 are taken into account. In particular, any reasonable adjustments requested by the employee should be considered.

# APPENDIX 1: EXAMPLES OF DISCIPLINARY OFFENCES

The list below gives examples of misconduct which may lead to disciplinary action and acts of gross misconduct which may lead to dismissal. This list is not exhaustive in terms of the types of behaviour or conduct which may lead to disciplinary action and should be referred to as a guide.

Examples that may lead to disciplinary action or eventual dismissal:

* Breach of employment contract or the council’s Code of Conduct and the Council’s policies and procedures.
* Unauthorised action on behalf of the council or service including inappropriate use of IT systems and breaches of IT security.
* Public criticism of the council’s decisions and/or activities connected with the employee’s own work.
* Failure to follow a reasonable instruction, including failure to observe the operational regulations or departmental/service procedures.
* Failure to follow arrangements for absence reporting or unauthorised absence and persistent poor timekeeping.
* Persistent or flagrant abuse of the flexi time system
* Abuse of public trust e.g. engaging in unauthorised employment during hours contracted to work for the council, or engaging in employment during off-duty hours, which is detrimental to the interests of the authority or brings it into disrepute.
* Misconduct in relation to official documents e.g. when an employee without sufficient cause destroys or mutilates any record or document made, kept or required for the purposes of the Council, or alters, erases or adds to any entry in such a record or document.
* Breaching political restrictions and lobbying or canvassing Members on own behalf
* Improper disclosure of information, breaches of confidentiality or breach of data protection regulations.
* Unauthorised use of or damage to the council’s equipment or abuse of facilities if caused by negligence.
* Acts of bullying and harassment, including discriminatory behaviour against a member of staff or the public on the grounds of any characteristic protected by equalities legislation.
* Not adhering to the Council’s values and standards of behaviour, for example through the use of inappropriate language or abusive behaviour.
* Actions or omissions inside or outside work which bring the Council’s reputation into disrepute or seriously affect public confidence in its ability to deliver effective services including lapses in professional registration.
* Particular care must be taken regarding the use of social media to ensure comments or posts made are not directly attributable to the work of the officer or the Council and do not bring the work of the Officer or Council into disrepute. See [Social Media policy](https://molevalleydc.sharepoint.com/:w:/s/Team-HRa/EdkM1FoNPf5EiTXWjfIexqMBxOsh48BQ06AbDNdV3zB1wg?e=Wt01va) for further guidance.
* This list is not to be regarded as exhaustive and serious examples may constitute gross misconduct.

**Examples of behaviour that may lead to dismissal for gross misconduct**

In addition to any serious examples of behaviours listed in the section above, the following list provides examples of offences which could be regarded as gross misconduct and result in summary dismissal:

* Dishonesty, theft, fraud, deliberate falsification of records.
* Failure or being complicit in failure to follow proper safeguarding procedures designed to protect vulnerable people.
* Sexual misconduct at work including the downloading, accessing or displaying of pornographic, obscene or offensive images.
* Sexual offences outside work including downloading illegal pornography.
* Emotional, financial, sexual or physical abuse of children, vulnerable adults or service users.
* Fighting, threatening behaviour or physical assault on another person.
* Serious incapability through alcohol or being under the influence or in possession of illegal drugs.
* Gross or serious negligence, which leads to loss of trust and confidence particularly if it causes unacceptable loss (including financial loss), damage or injury.
* Malicious, serious or intentional damage to property.
* Serious act of insubordination or failure to follow reasonable management instructions which leads to serious consequences.
* Unauthorised entry to computer or manual records or disclosing confidential information to the media or a third party.
* Serious bullying and harassment, including discriminatory behaviour against a member of staff or the public on the grounds of any characteristic protected under equalities legislation.
* Deliberate breach of health and safety regulations.
* Malicious misuse of any of our procedures, for example, making up allegations when taking out a grievance against someone
* Covertly recording colleagues, or any management (or other) meeting where the participants do not know it is being recorded

This list is not to be regarded as exhaustive.

# Appendix 2

# 

# Appendix 3

# Disciplinary Appeal Form

Employee Name:

Job Title:

Team:

Manager to whom the disciplinary appeal is addressed:

Name of representative (if any):

1. Outline the nature of, and reasons for, your appeal providing any supporting documentation.

2. Please state the name and job title of the manager who heard your disciplinary and explain why you do not think your disciplinary has not been conducted and/or resolved satisfactorily.

3. What specific action(s) would you like management to take to resolve this issue?

Signed: Date:

To be completed by manager receiving the appeal form:

Date received ………………..... Date copied to HR ......…………..

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Version** | **Version Status** | **Date** | **Version Comment** | **Version Author** |
| V1.1 | Final SLT draft | SLT meeting 7/10/21 | For SLT approval for document to be shared with Business Managers and Staff Hub.  SLT given 2 weeks to review and consider | KI |
| V1.2 | SLT amends discussed and agreed | SLT meeting 21/10/21 | Final SLT approved draft for BMT, Staff Hub consultation  (2 weeks – 25/10/21 until Monday 8/11/21 10.00 am) | KI |
| V1.3 | Amends discussed and agreed post Hub/BMT consultation | SLT meeting 11/11/21 | Agreed amendments following consultation | KI |
| V2 | Proposed Policy for all staff consultation | Week comm 15/11/21 | Policies out for all staff consultation (2 weeks) | KI |
| V2.1 | Amends made post consultation above | SLT meeting  2/12/21 | Proposed amendments following consultation for SLT discussion and approval | KI |
| V3.1 | FINAL (pre-formatting) | Week comm 6/12/21 | Policy finalised for publication and implementation | KI |
| V3.2 | Final (formatted) | Anticipated December 2021 | Final version post formatting | Comms |
| V4 | Review | 2024 | Policies to be reviewed at least every 3 years or in the event interim changes are needed (e.g. changes in legislation, work practices). | KI |

1. An example of a suspension risk assessment for completion is included in the Guidance to the Disciplinary policy [↑](#footnote-ref-1)