

# Disciplinary Policy

## Document Control

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<b>Owning Service</b>	Human Resources		

## Approvals (if required)

<b>Date Employment Committee gave authorisation for changes (where necessary)</b>
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## Change History

Version	Date	Description	Changes made by
1.5	February 2024	Clarify where allegations are minor that no formal investigation is undertaken and dealt with by the manager as a discussion Clarification and amendment to the wording relating to the ability to appeal. Added section on CCTV footage	Sam Johnson
1.4	March 2023	Clarification on the process for direct referral to stage 2. Clarification on whether dismissal appeals heard by Director or member panel	Melissa Berry
1.3	Sept 2022	Updates to greater reflect Equality & Dignity at Work policy	Alison Beswick
1.2	June 2022	General update, addition of Equality statement, addition of information about holding hearings	Sarah Darby
1.1	Feb 2019	Amended to remove reference to departmental HR and BORIS – now reads intranet	Melissa Berry

## Contents

FLOWCHART OF DISCIPLINARY PROCEDURE.....	1
1 INTRODUCTION.....	2
2 EQUALITY.....	2
3 PURPOSE.....	2
4 PRINCIPLES.....	3
5 EMPLOYEE SUPPORT.....	5
6 SCOPE - EMPLOYEES COVERED BY THE PROCEDURE.....	5
7 ROLES/RESPONSIBILITIES.....	5
7.1 Investigating Officer.....	5
7.2 Designated Officer.....	6
7.3 EXECUTIVE Director.....	6
7.4 Human resources.....	7
7.5 Councillors.....	7
8 THE CONDUCT OF A DISCIPLINARY CASE.....	7
8.1 Carrying out Meetings and Hearings remotely.....	7
8.2 CCTV FOOTAGE.....	8
8.3 Investigatory Stage.....	8
8.4 disciplinary penalties.....	8
8.4.1 Unsatisfactory conduct/performance.....	8
8.4.2 Formal action.....	9
8 LEVELS OF DISCIPLINARY ACTION.....	9
9 SUSPENSION.....	9
10 DISCIPLINARY RECORDS.....	10
11 RESIGNATIONS.....	10
12 EMPLOYEES WITH LESS THAN SIX MONTHS SERVICE OR IN PROBATIONARY PERIOD OR Individuals undertaking Casual Work.....	11
APPENDIX A – PROCEDURE FOR STAGE 1 or stage 2 DISCIPLINARY HEARING BY DESIGNATED OFFICER.....	12
APPENDIX B – PROCEDURE FOR APPEAL.....	14
APPENDIX C – PROCEDURE FOR APPEAL against dismissal.....	16
APPENDIX D - TYPES OF MISCONDUCT AND LEVELS OF ACTION.....	18

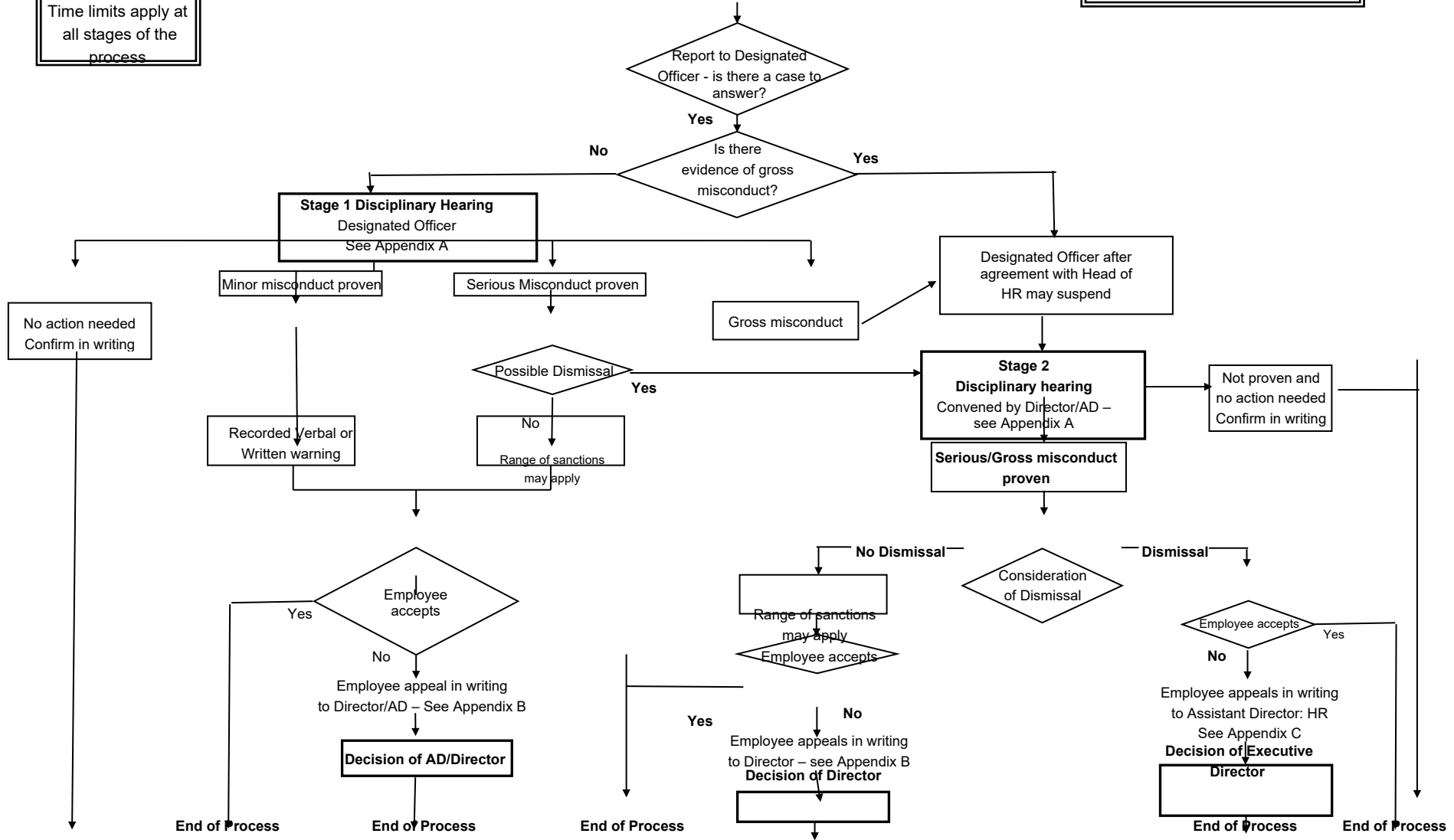
Appendix E – PIPoT and LADO allegations .....	20
Allegations against people working with adults who have care and support needs (Persons in Position of Trust (PIPoT)).....	21
Allegations against staff, carers and volunteers working with children (Local Authority Designated Officer (LADO)).....	21

# FLOWCHART OF DISCIPLINARY PROCEDURE

N.B.  
Time limits apply at all stages of the process

Investigating officer conducts initial investigation & employee interview

N.B in cases of minor misconduct informal process may be appropriate



# BRACKNELL FOREST COUNCIL'S DISCIPLINARY POLICY

## 1 INTRODUCTION

Bracknell Forest Council expects all its employees to work in accordance with its code of conduct, policies and procedures at all times. This Disciplinary Policy and procedure ensures that employees who breach expected standards of conduct are treated fairly with dignity and respect. This policy sets out the expected standards of conduct in the workplace and the procedures to follow to ensure these standards are adhered to, provide a fair method of dealing with alleged failures to observe them and to ensure corrective action is taken fairly and consistently. This policy and procedure are in line with the ACAS Code of Practice on Disciplinary and Grievance Procedures (March 2015)

## 2 EQUALITY

At Bracknell Forest Council we are committed to encouraging equality, diversity, and inclusion among our workforce, and eliminating unlawful discrimination. We want everyone that works for us to feel that their individuality is respected, and their unique contributions are valued. To support our commitment to equality and dignity at work, any incidents of discriminatory behaviour or language will be investigated in line with our disciplinary policy.

The aim is for our workforce to be truly representative of all sections of society and our customers, and for each employee to feel respected and able to give their best.

The organisation - in providing goods and/or services and/or facilities - is also committed against unlawful discrimination of customers or the public.

## 3 PURPOSE

It is in everyone's interest to ensure that any disciplinary matter is dealt with quickly, effectively, and above all fairly. Minor faults must be dealt with through normal management practice and may possibly involve coaching, supervision or other intervention from the line manager. Where this has failed to correct a situation, more formal measures may be necessary.

As a formal approach, the main purpose of the Disciplinary Policy is to encourage an improvement in an employee whose standard of work or conduct is unsatisfactory. The Council's policy is to ensure that effective arrangements exist for dealing with disciplinary matters and that, as far as possible, common standards are observed for all employees. It must be seen as an attempt to secure improvement in conduct; to treat staff in a fair and consistent manner; and to provide a procedure so all parties know what to expect.

The Disciplinary Procedure does not cover the initial stages of dealing with poor conduct or poor performance through factors such as ill health or lack of ability to cope with changing demands; this is dealt with initially by separate procedures, such as [Managing Attendance](#), [Performance Improvement/Capability](#), [Stress at Work](#) and [Substance Misuse](#).

## 4 PRINCIPLES

In accordance with the ACAS Code of Practice on Disciplinary and Grievance Procedures (March 2015), the Council's disciplinary procedure is based on the following principles:

- All references in the procedure to "Director" can also mean Executive Director or Assistant Director or other 2nd tier officer who may act in place of the Director.
- The aim is always to assist the employee to improve their standard of conduct or behaviour, and normal management practices such as conversations, support and monitoring should take place where possible before a formal process is invoked.
- No management decisions/disciplinary action will be made until there has been a full investigation of the facts.
- An employee will receive a fair hearing and will always be given a chance to state their case fully.
- Notes should be taken during the hearing either by the Designated Officer or an independent notetaker. The employee may request a copy of the notes after the hearing and it should be made clear to the employee at the outset of the hearing that this option is available to them. Notes do not have to be verbatim. Hearings should not be recorded. The purpose of the notes is for the Designated Officer to be able to refer to them in order to inform their decision and to clearly set out the outcome of the hearing.
- Any employee who is required to respond to allegations under the Disciplinary Procedure will be entitled to be accompanied at the formal hearing by a trade union representative or work colleague of their choice but by no one else. The employee is responsible for organising their own arrangements.
- When an employee is required to attend a disciplinary hearing, there will be advance written notice to them setting out the grounds for the hearing. Any documentary evidence and names of witnesses to be called will, as far as practically possible, be produced with that written notice
- Witnesses may be called by either party. The employee will be expected to disclose the names of their witnesses and provide their own documentary evidence. It may be more appropriate for witnesses to provide a written statement instead of attending the full hearing. If this is the case, the Designated Officer may discuss this with the employee in advance.
- The Council will dismiss without notice for acts of gross misconduct.
- Criminal activities (either inside work or outside if it is likely to affect an employee's work and/or the Council) will be investigated under the Disciplinary Procedure. Awaiting the outcome of any criminal investigation may delay the Council's hearing (guidance may be required from the relevant authority).
- Cases can be taken to appeal for a complete review of all the circumstances of the case and the penalty decided upon. Appeals against the decision of dismissal by a

Director will be heard by another Director. A panel of nominated Councillors will hear any appeals relating to the Chief Executive or Executive Director.

- In line with ACAS guidance, the Disciplinary Procedure will apply to a recognised trade union representative however no disciplinary action beyond an unrecorded verbal warning will take place with an employee who is a recognised trade union official until the circumstances of the case have been discussed by the Designated Officer and Head of HR or Assistant Director: HR with a full-time official or other appointed official of the employee's Trade Union following agreement with the employee.
- Every effort will be made to proceed in a timely manner. Designated Officers should ensure investigations are completed as soon as possible. It is recognised that there may be extenuating circumstances which could create delays, but this should be kept under regular review and attempts to conclude investigations promptly should be prioritised. The timescales are constructed to allow sufficient time for the preparation of a case. A formal request for a deferment of a hearing where further time is needed to prepare, or a Trade Union representative is unable to attend, will not be unreasonably refused provided enough notice is given and the reasons explained. The deferment will be rearranged in a timely manner and, in line with ACAS guidance, will not normally exceed five working days and will not exceed one instance.
- If an employee refuses to attend a disciplinary hearing the Designated Officer will write to the employee concerned explaining that a disciplinary decision may have to be taken in their absence, based on information to hand. If a reasonable reason for non-attendance is forthcoming, the hearing may be deferred (see paragraph above).
- Where an employee raises a grievance about a manager who is involved in a disciplinary case against them, the disciplinary process should be suspended while the grievance is considered. If this should happen, then the matter should be referred to the Assistant Director: HR who will examine the circumstances surrounding the grievance, and if warranted, may substitute another Designated Officer to take over the disciplinary case.
- All Designated Officers and Investigating Officers will have a copy of the Disciplinary Policy and Procedure and should have complete the e-learning packages relevant to their role within the process. There is additional training and guidance available from HR.
- HR staff will be available to Designated Officers for advice and support at every stage of the procedure and will advise on its consistent application. The Designated Officer should monitor the cases' progress and ensure the investigation is completed in a timely manner with no unreasonable delays, as well as keeping all parties updated on the status of the case on a regular basis.
- Should any allegation or concern arise involving suspected misconduct or inappropriate behaviour towards a child, young person or vulnerable adult additional safeguarding procedures apply. It is therefore essential that professional advice is sought immediately from the appropriate [safeguarding team](#) or Local Authority Designated Officer (LADO) before any investigation commences or any decision is made about suspension. Such cases may require the involvement of other agencies (e.g. social services, police) or notification to regulatory bodies, as well as particular care in how witnesses are approached. In situations where the

police are undertaking their own investigation(s), it may be necessary to place an internal investigation under these procedures on hold. The line manager will be responsible for ensuring regular communications are maintained during this period. Please see Appendix E for further information and guidance on safeguarding issues.

## **5 EMPLOYEE SUPPORT**

The Council acknowledges that going through a disciplinary process can be a stressful and unsettling time for all parties, and encourages anyone who feels they need support to seek this through any of these methods:

- trade union representative (if they are a member of a trade union)
- the [Employee Assistance Programme](#) which provides 24/7 telephone counselling
- speaking to their manager for support, or to arrange a confidential buddy
- speaking to an [Equality Ally](#) if there is an equality issue
- speaking to a Mental Health First Aider.

In addition, the Designated Officer should regularly keep the employee updated with the status of the investigation.

## **6 SCOPE - EMPLOYEES COVERED BY THE PROCEDURE**

This procedure applies to all employees of Bracknell Forest Council, except for:

- School based staff (see separate School policy)
- Employees serving a probationary period (see separate procedure below)
- For individuals undertaking casual work (see separate procedure below)

## **7 ROLES/RESPONSIBILITIES**

It is important that everyone who comes into contact with this Procedure understands their distinct roles, responsibilities and authority.

### **7.1 INVESTIGATING OFFICER**

- a) The Investigating Officer is appointed by the Designated Officer and investigates any alleged cases of misconduct. They will normally be the line manager of the employee who is to be investigated. There may be occasions when it would be more appropriate to appoint an Investigating Officer from outside the section/department.
- b) The Investigating Officer presents the circumstances surrounding the allegations, and findings of their investigation, including any documentary evidence, to a Stage 1 Disciplinary Hearing convened by the Designated Officer.
- c) The Investigating Officer will act as a witness for management during any subsequent hearings and appeals.
- d) The appointed Investigation Officer should have the capacity to prioritise the investigation to enable completion at the earliest opportunity. It is recognised there



may be extenuating circumstances which could create delays, but this should be kept under regular review and attempts to conclude investigations promptly should be prioritised.

## **7.2 DESIGNATED OFFICER**

- a) The Designated Officer will generally be the Head of Service (or equivalent) of the section in which the employee works. Another Designated Officer may be identified after consultation with HR if appropriate.
- b) The Designated Officer has overall responsibility for the case and can take advice from HR at any step of the process. The Designated Officer must ensure the process is done in a timely manner and should keep the employee regularly updated with the status of the case and informed of any delays and the reasons for them.
- c) The Designated Officer will appoint an Investigating Officer who is immediately available to carry out a full investigation of the case in a timely manner. Once the Designated Officer has received the Management Investigation Report they will decide whether there is potentially a case to answer and if a hearing is required
- d) If, at any stage, suspension is considered, the Designated Officer must seek guidance from the Head of HR or Assistant Director: HR.
- e) It is the role of the Designated Officer to hear any evidence of misconduct, consider the case from the employee and decide whether the alleged breach of discipline has occurred and whether it considered minor, serious or gross misconduct.
- f) If serious misconduct is evident, which is potentially a dismissible offence, or there is a possible case of gross misconduct, the investigation must be referred directly to a Stage 2 Hearing by the Designated Officer.
- g) In the case of a minor or serious breach of discipline falling short of dismissal, the Designated Officer may apply a range of sanctions from a recorded verbal warning to a final written warning.
- h) If the Designated Officer refers the case to a Stage 2 hearing, it is their role to present the circumstances of the alleged serious/gross misconduct at a disciplinary hearing convened by the Director. A Designated Officer may also act as a witness for the Director in an appeal.

## **7.3 DIRECTOR**

- a) The role of the Director is to convene, hear and decide upon the action to be taken in respect of Stage 2 Disciplinary Hearing, to deal with incidences of serious or gross misconduct where a potential outcome is dismissal. These cases will either be referred from the Designated Officer's Stage 1 Disciplinary Hearing or initiated by the Director themselves.
- b) Any appeal against the outcomes of a Designated Officer will be heard by a Director.

- c) Appeals against dismissal, which will have been made by a Director, will be heard by a Director not previously involved in the process.
- d) If the appeal is relating to a case against an Executive Director or the Chief Executive the appeal will be heard by a Panel of elected Members.
- e) There may be occasions where it is appropriate to appoint a Director from another Department to hear the case.

#### **7.4 HUMAN RESOURCES**

- a) The role of HR is to assist Designated Officers and Directors with cases of misconduct in fulfilling the requirements outlined in this policy. In no circumstances will the HR representative decide the outcome of any disciplinary hearing.
- b) The Head of HR or Assistant Director: HR will be consulted by the Designated Officer before a decision is taken that an offence is either one of prima-facie gross misconduct warranting suspension on full pay or serious misconduct which is potentially dismissible.

#### **7.5 COUNCILLORS**

- a) Councillors will be appointed to a Panel of elected Members and will be responsible for hearing appeals against the decision to dismiss a Senior Officer, this includes the Chief Executive or Executive Director.
- b) A Panel of Elected Members may, if appropriate, hear any case against a Senior Officer, and a separate member panel will hear any subsequent appeals.

### **8 THE CONDUCT OF A DISCIPLINARY CASE**

#### **8.1 CARRYING OUT MEETINGS AND HEARINGS REMOTELY**

All hearings should be carried out face to face unless there is a specific reason this is not feasible. Before deciding whether to carry out a meeting or hearing remotely or using a hybrid method, it is important to consider if:

- Everyone involved has access to the technology needed for video meetings, for example the necessary equipment and internet connection, and all parties agree to have their cameras switched on.
- Anyone involved has any disability or other accessibility issues that might affect their ability to use video technology, and whether any reasonable adjustments might be needed.
- It is possible to obtain all the evidence needed for the investigation or hearing, for example records or files that are kept in the office or workplace.
- Any witness statements or other evidence can be seen clearly by everyone involved during an interview or hearing and provided in advance where appropriate.
- It will be possible to fairly assess, and question evidence given by people interviewed during a video meeting.
- It is possible for the person under a disciplinary investigation to be fairly accompanied during the hearing.

- Meetings should not be recorded for any reason.

## **8.2 CCTV FOOTAGE**

If it is determined within the disciplinary process that CCTV footage could aid in determining events or allegations, a request should be made to the Data Protection Officer (DPO) via [DPO@bracknell-forest.gov.uk](mailto:DPO@bracknell-forest.gov.uk). It should be noted that access will not automatically be granted and will be reviewed on a case by case basis.

## **8.3 INFORMAL PROCESS**

In the event of a breach of conduct being minor enough not to warrant a disciplinary hearing, the manager has the jurisdiction to act following an initial fact-finding investigation. It would not be necessary to proceed to a full hearing to give an unrecorded verbal warning. In these situations, the manager may also be the Investigating Officer.

## **8.4 INVESTIGATORY STAGE**

Before any formal disciplinary action is taken, the Designated Officer should appoint an Investigating Officer to conduct a thorough investigation and/or management interview. The Designated Officer should inform the employee of the nature of the alleged misconduct and indicate that the matter is being formally investigated.

This stage is to be regarded as a meeting convened by management and not a Disciplinary Hearing. Therefore, the employee does not have the right to be accompanied at these discussions/interviews, but specific requests can be considered by the Investigating Officer.

## **8.5 DISCIPLINARY PENALTIES**

### **8.4.1 Unsatisfactory conduct/performance**

The Designated Officer may decide that where allegations are minor and are more appropriately dealt with by the manager, and do not need to a formal investigation. In these instances, there may be no need for a formal procedure to be entered into; coaching, supervision or other intervention from the line manager or other relevant parties may be a more satisfactory method of resolving issues than a disciplinary hearing as its aim is to encourage and help the employee to improve their conduct or performance.

A meeting should be set up by the Designated Officer to discuss the result of the investigation, which will involve the employee and their immediate manager. At this meeting, the employee does not have the right of representation.

Shortcomings should be noted and ways of improving explored. The employee must be clear about what needs to be achieved to improve and details of the review period. It must also be made clear that if there is no continued and sustained improvement, it will be necessary to invoke formal disciplinary procedures. If it appears that the meeting is revealing information which warrants a formal disciplinary hearing, the meeting should be adjourned and referred to the formal stage of the process.

If, after an investigation has taken place, the Designated Officer finds that there is no case to answer, then the Designated Officer must meet with the employee to inform them that there

#### **8.4.2 Formal action**

If it is not possible to resolve the case informally, then it should move to Stage 1 of the formal process. If, after considering the allegations, it is believed that serious misconduct (which is potentially dismissible) or gross misconduct has occurred, after consultation with HR, the matter will be automatically referred to Stage 2 of the policy.

- a) A Disciplinary Hearing will be arranged, this is designed to give the employee an opportunity to respond to the allegation(s), enable the Designated Officer to check the evidence to ascertain its seriousness and, if necessary, take disciplinary action. The process in Appendix A should be followed. An employee can only be dismissed following a Stage 2 Hearing.

Where the matter has been referred directly to Stage 2, the Investigating Officer will present the case.

- c) Where a case has been brought against an Assistant Director or Executive Director, the stage 2 hearing will be carried out by a Panel of Elected Members.

### **8 LEVELS OF DISCIPLINARY ACTION**

It is not possible to give a definitive list of penalties which may be awarded for particular offences. Each case has to be considered in the light of its own facts, the nature of the misconduct, the circumstances of the case, previous disciplinary record, post held etc. General guidance notes are given in Appendix D.

In all cases however, a belief needs to be established by the Designated Officer that, based on the balance of probabilities and taking into account all relevant facts, the alleged misconduct by the employee took place.

### **9 SUSPENSION**

There may be situations where the suspension of an employee is necessary whilst an investigation is carried out. However, suspension can leave individuals feeling prejudged, demotivated and devalued. It should therefore only be used after very careful consideration and in the most serious circumstances.

It should always be made very clear that suspension is not an assumption of guilt and is not considered a disciplinary sanction, but a way of proceeding pending possible disciplinary hearings. The individual should be reminded and reassured that a fair procedure will follow in which their point of view will be listened to and fairly considered. Some individuals may find it extremely distressing to be told they are being suspended. This may be the case even if the person does not show any obvious signs of distress. Employers should bear this in mind in deciding when and how to communicate a decision about suspension. It is good practice to encourage a suspended employee to access some immediate support and to offer help to do this. For example, to offer to contact a colleague, friend or relative of their choosing to meet them immediately.

The decision to suspend can only be taken after consultation with the AD:HR or the Head of HR. If an incident occurs outside normal office hours and a Designated Officer

is not available, the most senior manager available will have the authority to suspend. At the earliest opportunity the appropriate Designated Officer will be informed of the suspension and will discuss with the HR Management Team.

Notification of suspension is regarded as a meeting convened by management and not a disciplinary hearing, so the employees right to be accompanied at these discussions/interviews is not available. Suspension will be confirmed in writing, is on full pay and may be for as long as is necessary to allow a proper investigation to take place. Suspension should remain under review. Consideration should be given to temporary redeployment, working from home or alternative location as an alternative to suspension.

A Designated Officer may suspend where there is a serious allegation of misconduct and:

- a) If it is inappropriate for the employee to remain at their place of work whilst the investigation is carried out, e.g.:
  - because of access to records or contact with other employees which is likely to influence the outcome of the investigation
  - to allow investigations to be made which are likely to be inhibited by the presence of the employee such as in allegations of discrimination or harassment, etc.
  - working relationships have severely broken down to the point that there is a genuine risk to other employees, property, customers, or other business interests if the employee remains in the workplace
  - it is considered that there is a reasonable chance that the employee could tamper with evidence, influence witnesses and/or sway the investigation
  - the employee is the subject of criminal proceedings which may affect whether the employee can do their job
  - where an employee is able to commit deliberate acts of sabotage and there is a likelihood that they will do so
  - where the likely actions or behaviour of the employee could bring the Council into serious disrepute
  
- b) Where the nature of the alleged misconduct is such that its future occurrence or re-occurrence could have serious consequences for other employees of the Council or the public, e.g.:
  - dangerous practices
  - Drunkenness/under the influence of non-prescription drugs
  - irregularities in cash handling
  - safeguarding concerns

## **10 DISCIPLINARY RECORDS**

Official records will be kept securely and confidentially. Where departmental copies are kept, they will also be stored securely and confidentially in accordance with the GDPR..

Warnings will be active for the designated period and will normally be disregarded at the end of that specified time if satisfactory conduct or performance has been achieved.

## **11 RESIGNATIONS**

If an employee under investigation resigns before disciplinary action can be taken, the Designated Officer or Director will assess whether to continue or cease the disciplinary process, considering the length of notice to be served. This decision may depend on the allegation. However, if there is an issue which must be investigated and resolved e.g. needs to be reported to a professional body, fraud; or misconduct or inappropriate behaviour towards a child, young person, or vulnerable adult, then the Director will agree for the investigation to continue.

Where it has continued, the individual who has resigned should be informed of the outcome of any investigation and given the right to make any necessary comments. If requested, the outcome of the continued investigation might affect references and may be reported to appropriate regulatory bodies.

## **12 EMPLOYEES WITH LESS THAN SIX MONTHS SERVICE OR IN PROBATIONARY PERIOD OR INDIVIDUALS UNDERTAKING CASUAL WORK**

Employees on a probationary period (or extended probationary period) or individuals undertaking casual work are explicitly excluded from the Disciplinary Procedure. The only exception will be because of discriminatory/inflammatory behaviour or language, in which case suspension may be considered.

In the event of a disciplinary issue arising with someone in these categories, the following three step procedure can be used:

Step One: Following consultation with HR, depending on the nature of the alleged offence, the individual may be invited to attend a meeting with the manager, where the issue will be addressed. There will be the right to be accompanied by a trade union representative or a work colleague.

Step Two: The outcome of the meeting, which could be any action up to and including dismissal with the appropriate period of notice or pay in lieu of notice, will be confirmed in writing.

## **APPENDIX A – PROCEDURE FOR STAGE 1 OR STAGE 2 DISCIPLINARY HEARING BY DESIGNATED OFFICER OR DIRECTOR (STAGE 2)**

### **Prior to the Hearing**

Prior to the hearing it is advisable that the Designated Officer/Director contacts the employee to outline the procedures for the hearing (i.e. face to face or whether there is any reason the hearing should be held remotely), and the suggested date of the hearing. The Designated Officer/Director should also ask the employee if they need any reasonable adjustments for the hearing.

A letter giving at least five working days' notice of the hearing will be sent to the employee by the Designated Officer/Director outlining the matters to be dealt with and reminding the employee of their right to representation and to call witnesses. The employee will also receive copies of any papers to be produced at the hearing. Designated Officer/Director should be mindful when sending letters that may cause distress, ensuring that they are not at the end of a working day when the employee has no access to support.

The employee should supply to the Designated Officer/Director, at least three working days prior to the meeting, copies of any documents which they intend to produce and indicate which, if any, witnesses are to be called. The employee is responsible for arranging the attendance of their own witnesses and representative.

### **At the Hearing**

- a) The Designated Officer/Director should introduce those present and explain that the meeting is being held to consider whether disciplinary action should be taken in accordance with the Council's Disciplinary Policy. They should also explain the role of the people present at the meeting and outline how the meeting will be conducted.
- b) The Investigating Officer will outline their documentary evidence and findings. The Investigating Officer may call witnesses if appropriate.
- c) The employee and/or their representative will be entitled to ask questions of the Investigating Officer and witnesses relating to that evidence.
- d) The employee and/or the representative will put their case and be able to call witnesses.
- e) The Designated Officer/Director will have the opportunity to ask questions of the employee, witnesses and the Investigating Officer.
- f) The parties will have the opportunity to sum up their cases.
- g) The parties and their witnesses will withdraw.
- h) The Designated Officer/Director (with the HR Advisor), will deliberate in private, recalling the parties only to clear any points of uncertainty on evidence already given. If recall is necessary, both parties should return

- i) The Designated Officer/Director will announce their findings, and the action they intend to take, to the parties which will be confirmed in writing within five working days of the hearing.

The letter will specify the action taken, together with any review arrangements. The letter will also identify which Senior Officer the employee should submit any subsequent appeal to.

Copies of notes should be made available to the employee if requested. In certain circumstances (for example to protect a witness) the employer might withhold or redact certain information.



## **APPENDIX B – PROCEDURE FOR APPEAL**

An employee has a right to appeal to a Director against action taken by a Designated Officer/Director.

Where the appeal is against a dismissal, it will be heard by another Director.

The right of appeal may be for one of the following reasons and will be a complete review of the case:

- a) where the employee considers that the Designated Officer/Director has unjustly found against them.
- b) where the employee contends that a matter of fact referred to at the disciplinary hearing has not been carefully considered by the Designated Officer/Director in reaching their decision.
- c) where the employee feels that the disciplinary action taken by the Designated Officer/Director has been too severe.

The employee must exercise the right of appeal within five working days of receiving written confirmation of action taken against them. The letter indicating the employee's intention to appeal should be addressed to the Director. This includes appeals against a dismissal but should be a different Director to that who dismissed the employee.

Where possible, the appeal should be held within ten working days of the written notification of intention to appeal, but certainly without unreasonable delay. An HR Advisor will act as adviser to the Director.

### **Prior to the Hearing**

The Director will give notice in writing to the employee at least five working days in advance of the time and place of hearing. All documents relevant to the disciplinary hearing will be included with the notification.

The employee should supply to the Director, at least three working days prior to the appeal, copies of any documents which they intend to produce and indicate which, if any, witnesses are to be called. The employee is responsible for arranging attendance of their own witnesses and representative

### **At the Hearing**

- a) The Designated Officer/Director will put the case to the Director in the presence of the employee and their representative (if any) and may call witnesses.
- b) The employee (or their representative) will have the opportunity to ask questions of the Designated Officer/Director and witnesses on the evidence given by them.
- c) The Director may ask questions of the Designated Officer/Director and witnesses.

- d) The employee (or their representative) will put their case in the presence of the Designated Officer/Director and call their witnesses.
- e) The Designated Officer/Director will have the opportunity to ask questions of the employee and witnesses on the evidence given by them.
- f) The Director may ask questions of the employee and witnesses.
- g) The Designated Officer/Director and then the employee (or their representative) can sum up their case if they wish.
- h) The Designated Officer/Director and the employee and their representative and the witnesses will withdraw.
- i) The Director (with the HR Advisor) will deliberate in private only recalling the Designated Officer and the employee to clear points of uncertainty on evidence already given. If recall is necessary, both parties are to return.
- j) The Director will announce their findings, and the action they intend to take, to the parties which will be confirmed in writing within five working days of the hearing.

Copies of records/notes can be made available to the employee if requested. In certain circumstances (for example to protect a witness) the employer might withhold some information.

The decision of the Director will be final.

The table below shows who will hear the appeal at each stage.

Hearing held by	Stage	Who hears the appeal
Designated Officer	Stage 1	Director
Director	Stage 2 (not dismissal)	Different Director
Director	Stage 2 dismissal	Different Director
Executive Director/Chief Executive	Stage 2 (not dismissal)	Different Exec Director
Executive Director/Chief Executive	Stage 2 dismissal	Members Appeal Panel

### Panel of elected Members

Appeals made to a panel of elected Members should be supported by the Assistant Director: HR or nominated representative.

There will be a nominated Chairperson who will announce their decision to the parties, which will be confirmed in writing within five working days of the hearing.

## **APPENDIX C - TYPES OF MISCONDUCT AND LEVELS OF ACTION**

Whilst it is possible to give examples of types of misconduct (Minor, Serious, Gross) it is important that each case is looked at in relation to the type of offence, circumstances, previous record, and type of job. A minor breach of discipline in one job may be viewed more seriously in another because of the nature of the work, for example contact with the public, children, elderly or vulnerable people or responsibility for cash.

It is not possible to give a definitive list of penalties which may be awarded for offences, but there are general guidelines which should be followed. HR can give advice in complex cases, taking account of previous similar cases in the Council as consistency is a principal element in the disciplinary process.

Except in cases of summary dismissal for gross misconduct, employees who are dismissed will receive a period of notice or pay in lieu of notice in accordance with their contract of employment.

Employees would not normally be dismissed for a first breach of disciplinary rules except in the case of Gross Misconduct or specific and/or repeated cases of Serious Misconduct.

### **LEVELS OF MISCONDUCT**

#### **Minor Misconduct**

Minor misconduct does not impact significantly upon the work of the Council, employees or the public provided that it is not a repetition of an earlier similar offence.

(If the impact of the behaviour on the Council is significant on the facts of the case, it may be regarded as serious.)

Some examples would be:

- Poor timekeeping or non-attendance without reason
- Failure to follow instructions/carry out simple tasks
- Minor abuse of flexitime
- Incomplete timesheets
- Smoking/Vaping in a no smoking area

#### Penalties

A recorded verbal or written warning is the accepted penalty for minor misconduct, but the Designated Officer will need to make it clear to the employee that repetition may lead to more serious action. The warning will usually be up to 12 months.

#### **Serious Misconduct**

Serious Misconduct is that which impacts to a significant degree upon the work of the Council, other employees or the public and/or is a recurrence or continuation of conduct which is unacceptable and has been dealt with previously as minor misconduct.

(If the impact of the behaviour is not incredibly significant on the facts of the case, it may be treated as minor misconduct; if the impact is so serious in the case as to make the behaviour intolerable, it may be treated as gross misconduct.)

Some examples would be:

- Improper, disorderly, or unacceptable conduct at, during, or when arriving for work, including offensive language in front of the public.
- A breach of a rule which endangers the safety of another person.
- A breach of confidential information which might have serious repercussions for the Council.
- Neglect of responsibilities.
- Dishonest behaviour (depending on the degree and extent).
- A breach of Standing Orders, contract or financial regulations which falls short of theft/fraud.
- Behaviour (including bullying/harassment/victimisation) which is sexist, racist, or offensive to those of a particular ethnic origin, religion or belief, nationality, or sexual orientation, or relates to a disability.
- Malicious or reckless damage to Council property (depending on the degree or extent).
- Repeated and/or significant misuse of the Council's facilities, e.g. telephones, fax machines, internet, e-mail, including unauthorised entry into the Council's computer systems, the running of computer games and other unauthorised software, sharing of passwords and using proxy access to send emails purporting to be from someone else (depending on the degree and extent).
- Viewing or distributing offensive material whether on the internet, by email or in written form (dependent on the degree and extent this may be treated as Gross Misconduct).
- Participating without the knowledge or consent of the Council in other employment, business or profession which has an adverse impact on work or on the Council
- Working or indulging in other activities while absent from work on sickness absence, which breaches the Managing Attendance Policy.
- Failure to adhere to National Codes of Practice.
- A failure to adhere to or breach of Council policies and procedures/code of conduct.
- Failure to disclose any charge, caution, or conviction (not including fixed penalty notices) which affects or is likely to affect the employee's suitability for the position in which they are employed.

### Penalties

There are a range of penalties available to the Designated Officer including:

- Written warning for a given length of time.
- Final Written warning - used for continued minor offences or failure to achieve the improvements required by a written warning. The warning will generally be for up to 24 months but may, in certain circumstances, be left on file for an unlimited period.
- Other examples of appropriate action are transfer to alternative duties or demotion for a specified period or permanently; withholding of increments; suspension without pay for a specified period - normally not exceeding three months' duration.

Where a judgement is made that an offence may be dismissible (e.g., this may result from failure to heed a final written warning), a referral will need to be made to the Director for a further Hearing.

### **Gross Misconduct**

Gross misconduct is that which is so serious in relation to its impact upon the work of the Council, other employees, or the public that it cannot be tolerated under any circumstances and thus is likely to result in the termination of employment.

Some examples would be:

- Theft, fraud.
- Discriminatory/inflammatory language/behaviour or harassment.
- Serious incapability through alcohol or non-prescription drugs.
- Fighting/physical assault.
- Inappropriate behaviour of a sexual nature towards another employee, Council service user, pupil, or member of the public.
- Serious insubordination, for example, refusing to take lawful and reasonable orders from a Manager/Supervisor.
- Any act which may result in an action against the Council for negligence or serious lack of care of their duties or for breach of the duty of care.
- Using the Council's facilities/resources to conduct a private business
- Bringing the Council into serious disrepute.
- A serious breach of Health & Safety regulations/causing loss, damage, or injury through serious negligence.

This list is not exhaustive.

### Penalty

Dismissal without notice is given in cases of gross misconduct.

## APPENDIX E – PIPOT AND LADO ALLEGATIONS

### Allegations against people working with adults who have care and support needs (Persons in Position of Trust (PIPoT))

The Care Act 2014 requires that the local authority has a clear procedure and reporting process for dealing with allegations against people in positions of trust (PIPoT) who are an employee, volunteer or student working with adults with care and support needs on behalf of or for Bracknell Forest Council.

In line with the Care Act 2014 the Berkshire Safeguarding Adults Boards approved an overarching 'Allegations Management Framework' in 2022. This framework set standards around the management of allegations against people in a position of trust, supported by clear reporting requirements and arrangements across the whole system including information-sharing arrangements and explicit timescales for action.

[framework-for-the-management-of-allegations-against-people-in-positions-of-trust-pipot-v40.pdf \(berkshiresafeguardingadults.co.uk\)](#)

These procedures should be applied where a Council employee, volunteer or student acting in a position of trust has:

- behaved in a way that has harmed or may have harmed an adult or child.
- possibly committed a criminal offence against, or related to, an adult or child.
- behaved towards an adult or child in a way that indicates they may pose a risk of harm to adults with care and support needs.

An individual can be in a position of trust:

- Where they are likely to have contact with adults with care and support needs as part of their employment or voluntary work
- Where the role carries an expectation of trust
- Where the person in trust can exercise authority, power or control over an adults with care and support need

Where such concerns are raised about someone who works with adults with care and support needs, it will be necessary for the Council to assess any potential risk to adults with care and support needs who use their services, and, if necessary, to take action to safeguard those adults. The purpose is to ensure that risks potentially posed by the person are appropriately managed, alongside the specific safeguarding needs of the adult at risk.

Allegations will be investigated promptly in line with any internal or disciplinary investigations undertaken by Human Resources ( [Employment advice \(sharepoint.com\)](#) ) whilst ensuring the control of information in respect of individual cases is in accordance with accepted data protection and confidentiality requirements.

## **Allegations against staff, carers and volunteers working with children (Local Authority Designated Officer (LADO))**

The Local Authority Designated Officer (LADO) provides advice and guidance to employers and voluntary organisations around any concerns relating to adults who work with children and young people.

This includes:

- paid employees
- volunteers
- casual or agency staff
- foster carers
- religious leaders
- school governors
- any other people who have contact with children and young people as part of their role

All agencies that provide services for children have a duty to make arrangements to safeguard and promote their welfare and must have clear policies in place for dealing with allegations made against staff who work with children (Working Together 2018). Any such allegations should be reported immediately to a senior manager within the organisation and to the LADO within one working day.

This also applies to historical allegations that have come to light. The procedure should be consistent with the guidance in [Working Together to Safeguard Children](#) and the [Bracknell Forest Safeguarding Board \(BFSB\) child safeguarding](#).

The process for managing allegations should be used in all cases when it is alleged that a member of staff or volunteer has:

- behaved in a way that has harmed or may have harmed a child
- possibly committed a criminal offence against or related to a child
- behaved towards a child or children in a way that indicates they may pose a risk of harm to children
- behaved or may have behaved in a way that indicates they may not be suitable to work with children

The outcome of a LADO investigation is determined following a police investigation and/or Children's Services investigation. These investigations may run parallel to each other and can also run alongside any internal or disciplinary investigations undertaken by Human Resources.