

DISCIPLINARY PROCEDURE

Procedure Ratified by Joint HR Committee	June 2017
Procedure Review Date <i>When under review, this procedure should continue to be used.</i>	June 2020
This procedure is contractual	
Version <i>This procedure may be amended prior to the review date to comply with any new, relevant legal procedure or organisational change.</i>	2
Related procedures	Grievance Procedure Capability (poor Performance) Procedure Mediation Framework Investigation & Hearing Procedure

Summary

The council supports the following staff values of:

- Responsibility
- Fairness
- Respect

On this basis, it will act with these values in mind if it needs to consider formal action against an employee for any breach of this procedure. The procedure has been developed following the Arbitration, Conciliation and Advisory Service's Code of Practice when undertaking disciplinary (and grievance) investigations and hearings.

Where possible, the organisation will try and resolve matters informally or by Mediation. However, owing to the seriousness of some types of misconduct by an employee (who is not in their probationary period), then a manager of the organisation will undertake a full, fair and factual investigation into the alleged misconduct. Guidance on undertaking an investigation and the hearing process is contained in the *Investigations & Hearing Procedure*.

If the outcome of the investigation determines the matter needs to go to a Hearing. This will be heard by a separate manager. Should a formal sanction follow any hearing, all staff have a right of appeal.

Guidance on what constitutes misconduct is provided in the procedure.

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Section 1 - Purpose

- 1.1 Havant Borough Council is committed to managing disciplinary issues in line with the following principles;
- Fairly
 - Proportionately
 - Consistently
- 1.2 In return, the Council expects all employees to adhere to the following principles;
- Personal conduct which is acceptable to customers, suppliers, colleagues, Members and any other party having dealings with the Council
 - Personal conduct which promotes the Council's behaviours and values
 - Working in a way which demonstrates appropriate effort, diligence and integrity
 - Compliance with Health and Safety procedures and standards
 - Compliance with Council standards, policies and procedures
- 1.3 The purpose of this procedure is to describe how breaches of the above will be managed and to ensure that any warning applied is fair and reasonable taking into account all the circumstances of the case.
- 1.4 The procedure is compliant with relevant employment legislation and as far as is practicable follows the ACAS Code of Disciplinary & Grievance Procedures). The procedure has been developed in consultation with UNISON.

Section 2 - Scope

- 2.1 The procedure applies to all employees of the Council with the following exceptions:
- Employees who are within their probationary period. Disciplinary matters are dealt with under the Council's Induction and Probation Procedure however the examples of types of misconduct given in this procedure still apply.
 - Statutory Chief Officers (Head of Paid Service, Monitoring Officer and Section 105 Officer). A separate procedure is applied to these employees in accordance with the Council's constitution. A designated independent person must be appointed to investigate an allegation of misconduct and this must not be an employee of the Council.

Section 3 - Principles

- 3.1 The following principles apply in utilising this procedure:
- Informal action should be taken wherever possible, where it is appropriate to do so, to address breaches of employee responsibility outlined above
 - Management (meaning the relevant line manager, Head of Service, Executive Director or Chief Executive as appropriate) must raise and deal with issues promptly and not unreasonably delay meetings, decisions, or confirmation of those decisions
 - Where the employee may suffer a detriment due to their personal circumstances, for example a disability, be under the age of 18 or in some way considered vulnerable,

the formal process may be adjusted to take account of this and to mitigate any detriment which may arise. For example, enabling the employee to be accompanied by a family member or other third party, such as a social worker. Adjustments may also be made to enable a chosen companion to attend.

- Employees will always have the right to be accompanied throughout the formal disciplinary process by an accredited Trade Union representative or fellow employee, including disciplinary investigation meetings. These people are referred to as 'companions'. Chosen companions do not have to agree to the request to attend. The Council reserves the right to refuse a chosen companion where a conflict of interest is perceived. Employees are not entitled to be accompanied by a legal representative.
- No employee will be dismissed for a first breach of conduct, **except** in the case of gross misconduct
- The disciplinary procedure may be entered into at any stage as is appropriate to the alleged misconduct – minor, general, serious or gross misconduct
- Employees will have the right of appeal against any disciplinary warning given, under the Council's Appeals Procedure
- Employees have a duty to co-operate fully with requirements under this procedure
- Management have a duty to act fairly and reasonably at all times under this procedure
- Full written records will be made of actions taken under this procedure and will be kept confidentially and in line with the HR Document Retention Schedule
- Breaches will be dealt with according to the level of seriousness and the impact on the Council, customers, colleagues, Members or other party having dealings with the Council.
- The authority to dismiss an employee rests with the Chief Executive, Executive Director, Head of Service or any officer who has delegated authority under the Council's constitution.
- Separate procedures exist for Chief Officers under the Joint Negotiating Committee for Chief Officers of Local Authorities. 'Chief Officers' refer to Head of Paid Service, S.105 Officer and Monitoring Officer.

Section 4 - Guidance for Managers and Members of Staff

4.1 Mediation

4.2 Mediation may be considered at any stage of the procedure where it is deemed as appropriate and where the parties consent. Mediation will be undertaken in line with the Council's in-house Mediation Framework.

4.3 Mediation can be used to: rebuild relationships, deal with conflict between a line-manager and their staff and personality clashes. However, some cases are unsuitable for mediation such as: a line-manager avoiding their managerial responsibilities, a decision where a right or wrong is needed, the individual brings a claim of discrimination or harassment.

Section 5 - Suspension

- 5.1 An employee subject to the formal procedure (such as gross misconduct cases) **may** be asked to remain away from the workplace, where there is reasonable concern by management that their presence may compromise the disciplinary procedure or present some form of risk to the Council, or to the employee.
- 5.2 Suspension is not a disciplinary sanction and should not be used as such. Prior to making any decision to suspend, the relevant manager will discuss with HR and a their line- manager to ensure the action is proportionate and fair and the necessary arrangements are put in place to instigate the suspension. The suspension should be regularly reviewed and not be longer than necessary. The investigation officer should be made aware of the timeframe for any investigation. Should this be longer than originally agreed, then the employee's period of suspension should be extended and the employee should be informed.
- 5.3 The employee will receive their normal contractual terms and conditions whilst on suspension.
- 5.4 During Suspension, a manager will organise *Keeping in Touch Arrangements* This is to ensure that the employee continues to receive appropriate support (e.g Occupational Health or the Employee Assistance Programme) from the organisation and is kept informed of the progress of the investigation but without being informed of the details.

Section 6- Employee's Union Support

- 6.1 Following notification of the instigation of the disciplinary procedure and procedure, it is the employee's responsibility to contact their union representative to gain the necessary support.

Section 7-Types of Misconduct

- 7.1 Misconduct is a broad term and it is not possible to define every type of breach of council procedure, values or standards of behaviour. Details of what may be considered minor/misconduct or gross-misconduct are outlined in the 'types of misconduct' chart on the attached appendix

7.2 Informal Stage

- 7.2.1 Minor breaches may be dealt with informally by management where the breach is considered relatively minor by management and informal action is appropriate. This can include an informal 'light touch' investigation to establish facts.
- 7.2.2 As a minimum, informal action will be a discussion with the employee to address their breach and to outline future expectations of behaviour/conduct. Management is required to consider the root cause of the breach and take appropriate steps to prevent a recurrence, for example, training or other technical support, or coaching in appropriate personal behaviour.
- 7.2.3 The outcome will be documented and held on the employee's file for up to six months and may be referred to as part of the formal procedure where there is a repeat of the issue. This does not constitute a warning under this procedure.
- 7.2.4 Employees should be made aware that whilst the breach is being dealt with informally, any breach is taken seriously by management and could result in formal stages of the procedure being used.
- 7.2.5 There is no right of appeal against an informal approach being taken.

7.3 Formal Stage

- 7.3.1 A formal process will be used by management where there is repeated breach, or breaches which have been dealt with informally, or where the misconduct is considered serious enough to warrant use of the formal stage without reference to the informal stage first.
- 7.3.2 The following actions must be taken if a formal process is to be used;
- A member of the HR team will be available to provide any necessary HR advice on a disciplinary case and will give guidance on the appropriate treatment of a breach, to ensure consistency and fairness.
 - The employee is advised verbally by management that there is an allegation of a breach and that a formal process will be used to manage this. The employee may or may not be required to be away from the workplace during this time (refer to section 5 suspension). The employee will be given details of the Employee Assistance Scheme. This is followed up in writing to the employee.
 - If it is not appropriate for the line manager to investigate the case, an investigating officer will be allocated to the case having been given a full briefing (see template in the Investigation & Hearing Procedure) by the relevant member of management and will undertake an appropriate and proportionate investigation to establish the facts. For allegations of gross misconduct, an investigator from outside of the service area will be appointed.
 - The employee will be notified of the outcome of the investigation by the relevant member of management and whether there is a requirement to hold a disciplinary hearing. This will followed up in writing to the employee.

Section 8 - Criminal offences outside of employment

- 8.1 Criminal offences or proceedings outside of employment must not be treated as automatic reasons for disciplinary action. Action will only be taken if the alleged offence has an impact on the employee's role and responsibilities, or has a detrimental impact on the Council in some way.
- 8.2 Employees have a responsibility to notify the Council of any criminal proceedings against them

Section 9 - Disciplinary Hearing

9.1 Principles

- 9.2 Once it is determined that there is a case to answer, a formal disciplinary hearing is convened. The employee is invited in writing and given **five** working days' notice. They are given full details of the allegation(s) against them and provided with copies of all materials to be used in the disciplinary hearing. Due consideration should be made to the location of the hearing.
- 9.3 The hearing panel will consider all the evidence provided and make a decision. The employee will be notified verbally by the hearing panel chair and they will follow this up in writing to the employee. Where necessary, and in serious cases, HR advice can be obtained.

- 9.4 Any warning given under the procedure must be documented fully in writing and a copy given to the employee within a reasonable period of time following the warning being issued. This warning will include the right of appeal.
- 9.5 Postponement of a Hearing
- An employee who is unable to attend the disciplinary hearing on the notified date must advise management as soon as possible and propose an alternative date, which must be no later than **five** working days from the original date of the hearing. There **must** be a substantial reason given for the proposed postponement. The proposed new date may be rejected by management if the reason given for the postponement is not considered substantial or reasonable. It is the employee's responsibility to ensure that their representative is able to attend the hearing. Where the employee is a member of a union, the Council expects the union to provide a representative for the hearing without any unnecessary delay.
- 9.6 Occupational Health advice must be sought if the employee is absent due to ill health, to determine their fitness to attend a formal hearing
- 9.7 If the employee cannot attend a hearing within the further five working day period from the original date of the hearing, the hearing will take place without the employee present.
- 9.8 Where an employee fails to attend a hearing without prior notice, the hearing will be rearranged once and the employee notified that the hearing will be held in their absence if they fail to attend again.
- 9.9 Resignation pending a disciplinary hearing
- 9.10 The Council reserves the right to continue disciplinary proceedings where an employee resigns pending a hearing. A hearing will be convened during a notice period where the allegation is one of theft, fraud, child protection or other very serious matter. The outcome of the hearing will be notified to the individual and will be communicated to the relevant authorities where it is necessary to do so. The employee will be advised that any reference provided will reflect the outcome of that hearing.

Section 10 -Appeals

- 10.1 Following a formal disciplinary/dismissal sanction, an employee has the right of appeal. Any appeal must be made in writing to the Head of Service (OD) within **ten** days of receipt of written confirmation of the warning or the dismissal. The appeal must clearly state the grounds for the appeal. The grounds of appeal will be one or more of the following:
- That the decision was inappropriate in the circumstances
 - That new evidence has come to light or that evidence which should have been taken into account was not taken into account.
 - That the procedure was not followed correctly.
- 10.2 An appeal against a written warning will be heard by a manager at the next most senior level above the manager who issued the written warning and who has had no previous contact with the case (where necessary this will be a manager from another service). A representative from HR will act as advisor. Such an appeal hearing will be held as soon as reasonably possible.
- 10.3 An appeal against a dismissal will be heard by the Joint HR Committee. Such an appeal

hearing will be held as soon as is reasonably possible.

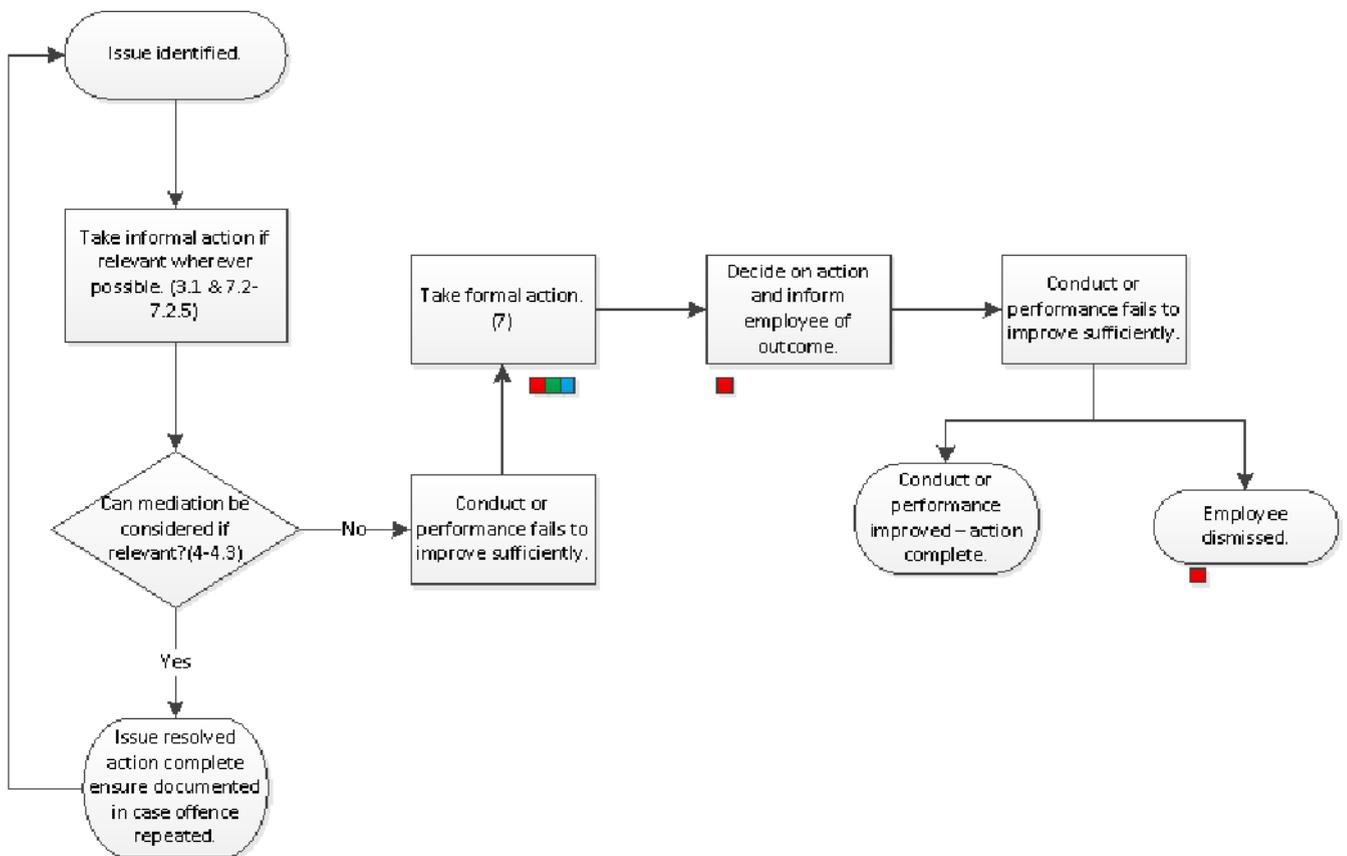
Section 11- Trade union representatives subject to disciplinary procedures

- 11.1 Formal disciplinary processes must not be instigated against any trade union representative until, having obtained the employee's consent, Human Resources have notified the Branch official of the union concerned. Where the Branch official is not available, the Regional representative will be notified. Where the Branch official is the subject of a formal disciplinary procedure, the Regional representative will be notified, once consent is gained from the employee.
- 11.2 If consent is not given by the employee, the disciplinary process will still continue without Branch or Regional representatives being notified.

Section 12 - Review

- 12.1 This procedure will be reviewed every 2 years by Human Resources, or at the request of UNISON, or as required to remain consistent with current employment legislation.

Section 12-Handling a Disciplinary Investigation/Hearing . Overview



Key

- Right to Appeal (10-10.3)
- Right to be accompanied
- Outcomes:
 - No penalty.
 - First written warning.
 - Final written warning.
 - Dismissal or other sanction.

Note

Further details on procedure and outcomes can be found in referenced policy points. (e.g. 3.1)

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Appendix 1 Types of Misconduct

Misconduct is a broad term and it is not possible to define every type of breach of Council rules or standards of behaviour, and how it will be treated within this procedure. The information below gives guidance as to how particular types of misconduct **may** be treated but this is not an exhaustive or prescriptive list.

Allegation	Informal Stage	First Written	Final Written Warning	Gross Misconduct
Authority level	Immediate Line Manager	Line Manager or above	Service Manager or above	Executive Head or above
Sanction	Informal approach unless there has been a repeated breach	First written warning - approximately 12 months. Sanction may be lengthened or shortened at the discretion of the Disciplinary Hearing Chair	Final written warning - approximately 18 months. Sanction may be lengthened or shortened at the discretion of the Disciplinary Hearing Chair	Dismissal - with notice where employee has already received a final written notice or without notice (summary dismissal) even for first offence. In exceptional circumstances an indefinite final written warning may be given where the offence is extremely serious but does not warrant dismissal. Demotion may also be considered as an alternative to dismissal. Any sanction of demotion must be discussed/agreed with the employee. Any demotion will not attract pay protection but the salary of the role.
Examples	Poor timekeeping, minor acts of insubordination, minor unauthorised absences	Repeats of examples given for minor misconduct where informal action has taken place. Minor breaches of Council rules, procedures or policies, minor breaches of confidentiality, excessive breaks, unacceptable conduct or behaviour which has an unfavourable impact on other persons or service delivery	Repeats of examples for General Misconduct where a first written warning has been issued. Behaviour or conduct which has a detrimental impact on other persons or service delivery including; negligence, insubordination, breach of Health & Safety procedures or instructions, unauthorised absence from the workplace, failure to notify sickness absence or other absence as required.	Repeats of examples for Serious Misconduct where a final written warning has been issued. Behaviour or conduct which has a significant and detrimental impact on other persons or service delivery including; conduct contrary to the code of conduct for employees, fraud, deliberate falsification of records, false accounting, corruption or potentially criminal activities, serious abuse of a position of trust, acts of violence, bullying, harassment or threatening behaviour, within or outside of the workplace either directly or indirectly, including the use of social media, serious contravention of Council policies, procedures or regulations, incapability at work through the misuse of alcohol, substances or prescription medications, failure to report suspected criminal activities, including abuse of children or other vulnerable individuals, engaging in activities incompatible with absence on sick pay, for example, undertaking other paid or unpaid work for which the employee is considered unfit to undertake for the Council, or participating in activity likely to delay a return to work or prolongs absence from work.