



DEVON COUNTY COUNCIL

CORPORATE CONDUCT POLICY AND PROCEDURE

**To be read in conjunction with DCC Corporate Conduct Policy & Procedure
Management Guidance.**

POLICY

1. INTRODUCTION

- 1.1 This procedure applies to all staff employed by Devon County Council, except probationers, Devon Direct Services and the staff of locally managed schools, where separate procedures are in force.
- 1.2 The procedure recommends appropriate management levels for different levels of action, but this will vary dependent upon Officers' availability and whether they have been suitably trained.
- 1.3 This procedure takes into account the requirements of the Dispute Resolution provisions of the Employment Act 2000 and takes effect from 1st April 2006 and supersedes all previous disciplinary procedures and practices.
- 1.4 This policy and procedure will be reviewed after 3 years or earlier on the request of either the Trade Union or management side of the recognised consultative forum.

2. PURPOSE

- 2.1 This policy is designed to help and encourage all employees to achieve and maintain general standards of conduct and behaviour. When required standards are not adhered to, having followed this agreed procedure, corrective action needs to be taken either informally by the line manager or a more senior member of staff or through the formal Conduct Procedure depending on the circumstances of each case.
- 2.2 The aim of the procedure is also to ensure that when disciplinary action needs to be taken, it is applied consistently, objectively and fairly in every case.

3. GENERAL PRINCIPLES

- 3.1 A representative from a recognised trade union / professional association, or a companion, who is a work colleague, may accompany staff at all stages of the procedure.
- 3.2 There may be occasions when, having followed this agreed procedure, depending on the seriousness of the misconduct involved, it will be appropriate to enter the procedure at the stage of final warning or dismissal, without warning or notice, if applicable. (see paragraph on gross misconduct)
- 3.3 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when dismissal may be without notice or payment in lieu of notice.
- 3.4 This procedure is designed to establish the facts quickly and to deal consistently with disciplinary issues. No formal disciplinary action will be taken until the case has been properly investigated by an investigating officer appointed by the 'Designated officer' and any action taken must be reasonable in the circumstances.

3.5 Misconduct and incapability are often difficult to distinguish between in respect of poor work performance and a matter which is initially pursued through this policy may therefore be transferred to the Capability Policy by agreement with the employee.

3.6 The Head of Employee Relations must be consulted on all formal stages of the Conduct Procedure and will be responsible for maintaining consistency and fairness within the procedures on behalf of the County Council. In the event of a disagreement between the Head of ER and a Director, in any specific case of formal disciplinary action, the matter shall be referred to the Director of Personnel & Performance.

3.7 PRINCIPLES OF NATURAL JUSTICE

Essential to the fair and reasonable application of these procedures, is the underlying commitment to the basic fundamental principles of fair treatment, namely:

- The employee must know, in full, the allegations made against him / her at the earliest opportunity;
- The employee must have an opportunity to state his /her case before any decision is made;
- Any decision made will be by an Officer who is not associated directly with the employee and has acted in good faith.
- The employee has the right to appeal against formal written and final written warnings and/or against dismissal.

3.8 RIGHT TO BE ACCOMPANIED

- In any case of formal disciplinary action the employee will have the right to be accompanied by a companion who is a work colleague or trade union/professional association representative.
- If the employee wishes, the representative should be allowed to address the disciplinary hearing in order to:
 - Put the employee's case
 - Question / cross examine the investigating officer and employer's witnesses
 - Sum up the employee's case
 - Respond on the employee's behalf to any view expressed at the hearing
- The representative has no right to answer questions on the employees' behalf, or to address the meeting if the employee does not wish it, or to prevent the employer from stating their case.

3.9 DISCIPLINARY ACTION AGAINST TRADE UNION REPRESENTATIVE

Although the usual conduct standards must apply to trade union representatives, no formal action, within this conduct policy, will be taken against an employee who is an accredited trade union representative, nor will suspension normally be applied, until the circumstances of the case have been discussed with a full-time or other nominated official of the union concerned.

3.10 PERSONNEL ADVICE

- Employee Relations (ER) should be consulted when formal disciplinary action is being considered.

- ER can provide advice on procedural matters, to any party, at any stage of this procedure.

3.11 INTERNAL AUDIT

- All Officers and Members are responsible for giving immediate notification to the head of Internal Audit where there are grounds to suggest any financial impropriety or irregularity concerning cash, stores or other property of the Council or held by the Council.
- Any financial irregularity will be dealt with in accordance with the Policy Document titled, 'Strategy for Dealing with Financial Irregularities'. Where there are grounds to suggest any irregularity, after a preliminary investigation the Director of Finance and IT will consult with the Service Director and the County Solicitor before involving the Police if it is considered that a criminal offence may have been committed.

3.12 TIME LIMITS

The time limits referred to in this procedure should normally be adhered to but may be varied by mutual agreement between employer / employee and the employee representative.

The applicability of the Disability Discrimination Act and consequent reasonable adjustments must be considered, e.g. it may be a reasonable adjustment, within the meaning of the DDA, to allow for a longer period of postponement, to enable the employee to attend the meeting.

4. EQUAL OPPORTUNITIES

This procedure is based on best practice and is designed to promote a consistent and effective approach. Managers have a particular responsibility to ensure that they manage the processes set out within this policy in accordance with the County Council's Justice Through Equality policies and in full compliance with the provisions and requirements of the Disability Discrimination Act, 1995. Action taken must not discriminate either directly or indirectly on the grounds of a person's race, colour, ethnic origin, nationality, sex, sexual orientation, religion or belief, marital status, disability or age.

5. SPECIAL PROVISIONS FOR CHIEF OFFICERS AND DEPUTIES

The general provisions of the County Council's Constitution, Part 6 – Codes of Personal Conduct, Officer Employment Procedure Rule, paragraph 5, shall apply to disciplinary action against or dismissal of Chief Officers and Deputy Chief Officers.

6. RECORD KEEPING STANDARDS

- 6.1 Appropriate written records of any interviews, hearings or action taken under this Policy should be compiled and retained for reference purposes together with copies of any other relevant documentation.

- 6.2 All records will be kept confidentially and retained in accordance with the Data Protection Act (1998), taking into account an individual's right of access to personal information held about them.

7. GENERAL STANDARDS OF CONDUCT

- 7.1 The public is entitled to demand of a local government employee conduct of the highest standard. General standards are implied in any employment contract and are, therefore, conditions of employment. For example, employees are expected to:

- maintain conduct in keeping with the interests and standing of the County Council;
- declare to the County Solicitor any financial or non-financial interests, direct or indirect, which could conflict with the Council's interests.
- devote full attention, whilst at work, to the duties of their positions and in doing so act with responsibility, judgement and good faith;
- carry out any reasonable lawful instruction given by the County Council or its officers relating to those duties;
- never under any circumstances divulge to any unauthorised person, or make personal use of confidential information connected with the County Council or its employees;
- observe the Council's rules, regulations and instructions inc. the Code of Business Conduct.

- 7.2 Serious misconduct outside of work may need to be dealt with under the formal conduct procedure, where the conduct may be considered to have a potentially serious effect upon the employment relationship. Advice should be sought from ER.

- 7.3 It is the responsibility of the County Council and the Directorate through local managers and supervisors, to ensure that employees are aware of what is required of them, that they have been provided with reasonable opportunity to fulfil those requirements and understand the consequences of failing to meet them.

8. GROSS MISCONDUCT

There are circumstances when the actions of the employee are serious enough to justify dismissal without notice, having followed this agreed procedure. This may be action or behaviour which constitutes a breach of trust and confidence and thus destroys the employment contract between the employee and the employer, making any further working relationship impossible.

When it is found that an employee has committed an act of gross misconduct, summary dismissal (dismissal without notice) is a probable outcome.

Examples of behaviour at work that may be regarded as gross misconduct include:

- Dishonesty, theft, fraud (including corruption) or misuse of Devon County Council property or resources.
- Providing false information in relation to an application for employment.
- Violence to other members of staff or members of the public
- Drunkenness
- Sleeping whilst on duty
- Criminal conviction and/or failure to disclose a criminal conviction
- Being in possession of, or under the influence of illegal substances or drugs
- Serious negligence which causes unacceptable loss, damage or injury
- Refusal to follow a reasonable formal instruction

- Physical, sexual, emotional or verbal abuse of colleagues and/or clients/children/vulnerable adults, that are entrusted into the care of DCC.
- Obscene or indecent behaviour or sexual misconduct
- Possession of, or taking or distributing indecent photographs or publications
- Breach of security, financial procedures or confidential procedures.
- Inappropriate use of computer and/or communications systems
- Acting in a manner dangerous to others
- Making of vexatious allegations
- Serious breach of Health & Safety rules
- Discrimination, including harassment and victimisation on the grounds of a person's race, colour, ethnic origin, nationality, gender, sexual orientation, religion or belief, marital status, disability or age.
- Engaging in unauthorised employment during hours contracted to work for the Council or during periods of specially designated leave e.g. sick leave, special leave etc.

The above list is not comprehensive or exclusive, but indicates the kind of misconduct that might result in summary dismissal for employees. In certain circumstances, serious misconduct that has taken place outside work, which may potentially bring DCC into disrepute, may also be regarded as gross misconduct.

9. AUTHORITY TO TAKE ACTION

- 9.1 Chief Officers and Deputy Chief Officers, designated by Devon County Council shall have delegated to them all the disciplinary powers of the County Council as employer, including the power to dismiss in the case of all employees' within their Directorates.
- 9.2 Delegated authority may be given to other named Senior Officers, named by the appropriate Chief Officer / Deputy Chief Officer, to take defined levels of disciplinary action against those employees within their jurisdiction following specific training.
- 9.3 Disciplinary action, within the Conduct Policy, may only be taken by a person with the appropriate authority. For the purposes of this policy the person with delegated authority to take disciplinary action, shall be known as the 'Designated Officer', who will act in good faith and free from bias.
- 9.4 An Investigating Officer will be appointed to investigate the case and to report the findings to the 'Designated Officer', and will have had no previous involvement in the case.
- 9.5 All other managers / supervisors, who have not been given delegated authority, are only able to take informal action.

PROCEDURE

10. THE INFORMAL PROCEDURE

- 10.1 Cases of minor misconduct are best dealt with informally, between the employee and the employee's line manager, with ER advice and support if required. The employee may also request the presence of a trade union/ professional association representative or work colleague. Informal counselling and re-statement of policy or expectations may be all that is required at this stage. Additionally, further training may be required by the employee.
- 10.2 If this is the case, an agreed note should be made of the discussion, what action was agreed and placed on the employee's file, for a time limited period of between 3 – 6 months, depending upon the circumstances of the case. A copy should be given to the employee.
- 10.3 The informal procedure should allow for issues to be dealt with quickly and confidentially. Professional guidance, given by the line manager/supervisor, may be confirmed in writing at this stage, so that it is clear to all parties what improvement is required before formal action, within this procedure, would be considered.

11. THE FORMAL PROCEDURE

- 11.1 If informal action does not bring about improvement, or the misconduct is considered to be too serious to be classed as minor, formal action should be taken.
- 11.2 Consideration must be given, with advice from ER, whether it is appropriate for the employee to remain at work whilst an investigation is carried out. Refer to paragraphs entitled 'sending home & suspension'.

THE INVESTIGATION

- 11.3 An Investigation should start as soon as possible after the alleged incident has occurred or complaint has been received, to ensure that:
- The matter is dealt with promptly;
 - DCC assets are secured;
 - The chain of evidence is preserved;
 - Any prima facie evidence of a criminal offence is reported to the police;
 - Findings are reported promptly to senior management.
- 11.4 An Investigating Officer will be appointed by the 'Designated Officer' to investigate the allegation (s) or complaint. The terms of reference, timescales and persons to be interviewed will be agreed and the Investigating Officer may consult with professional colleagues or experts as applicable.
- 11.5 Any witnesses will be interviewed and asked to provide a written statement. At the interview, the witness will be given the opportunity to be accompanied by a trade union/ professional association representative or a companion who is a work colleague and the Investigating Officer should be accompanied by an ER representative or appropriate colleague.
- 11.6 The employee will be nominated a link support officer, not connected with the investigation, who the individual can contact for advice on procedural matters.
- 11.7 The Investigating Officer must advise the employee of the progress of the investigation, particularly if there are unforeseen delays in gathering evidence.
- 11.8 The investigation must be factual and objective.

- 11.9 On its conclusion the investigation should be fully documented in a report. The Designated Officer, with advice from ER, will then determine whether a disciplinary hearing is required and if so, what issues should be covered at the hearing.

THE DISCIPLINARY HEARING

- 11.10 Once the decision has been made to convene a formal disciplinary hearing under the conduct procedure, the employee will be notified in writing of the allegation(s) against them, the basis of the allegation (s) and be invited to a disciplinary hearing to discuss the matter. A copy of the report for the employee and for their representative will be enclosed with the letter and this will include copies of statements relating to the case. At least five working days' notice of the hearing must be given.
- 11.11 The employee must be advised of their right to representation at the hearing. See paragraph, 'Right to be Accompanied'.
- 11.12 If the employee's chosen representative is not available on the date set for the hearing, then an alternative time and date will be offered within five working days of the original date for the hearing, whenever possible.
- 11.13 After the hearing the Designated Officer may take one of the following courses of action, according to the circumstances of the case:
- (a) **take no disciplinary action;**
 - (b) Issue an **oral warning** for minor breaches of discipline. This will be confirmed in writing to the employee and recorded on their personal file. The employee will be given the opportunity to append his/her own statement that will be retained on file for the duration of the warning.
 - (c) **give a formal written warning** if there has been either a repeated minor breach in conduct or a first but more serious breach of discipline.
 - (d) **give a final written warning** if there has been an insufficient response to previous warnings and conduct is still unsatisfactory, or in the case of a first but sufficiently serious breach of discipline.
 - (e) **give the employee notice of dismissal** if, following a final written warning, conduct remains unsatisfactory and the employee still fails to reach or maintain the prescribed standards;
 - (f) **dismiss the employee summarily** without notice and without there necessarily having been any previous disciplinary warnings when gross misconduct has been found to have taken place or there is a reasonable belief that this is the case, in considering all the facts presented to the Designated Officer.

12. WRITTEN CONFIRMATION

- 12.1 In all cases where formal disciplinary action is taken, the employee shall have the decision confirmed in writing within five working days. The letter must state the level of the action taken and the reasons for that action. In the case of a formal written or final written warning, the letter must specify any remedial action required of the employee and the consequences of any recurrence of misconduct.
- 12.2 Unless otherwise specified to the employee in the letter of confirmation, a formal written warning will be disregarded for further disciplinary purposes after six months, and a final written warning after twelve months.
- 12.3 The written confirmation of a formal written or final written warning or dismissal must inform the employee of their right of appeal.
- 12.4 Warnings which are time expired will be removed from the file and will be disregarded for further disciplinary purposes unless there are exceptional circumstances. The

Designated Officer must therefore seek advice from the Head of Employee Relations on the nature of the perceived exceptional circumstance before considering making any reference to previous warnings which are time expired. Such references must, however, be appropriate to the seriousness of the circumstances concerned and will normally only have regard to any potential risk to vulnerable clients or children, in the care of the Authority.

13. APPEAL

13.1 An employee has a right of appeal against a formal written warning and a final written warning and/or against dismissal.

13.2 The right of appeal against a formal written warning and final written warning will be to the Chief Officer or his/her designated Deputy, of the Directorate concerned, or a Manager acting at Deputy or Assistant Director level, except in cases where that Chief Officer has issued the warning. In such cases the right of appeal will be to another Chief Officer nominated by the Director of Personnel & Performance.

13.3 The right of appeal against dismissal is to the Personnel Panel, which is a panel of at least three County Councillors.

13.4 The right of appeal must be exercised within ten working days of receipt of the letter of confirmation of disciplinary action. The appeal, stating the grounds on which it is made, must be in writing and addressed to the Director of Personnel & Performance, who will make the necessary arrangements. In all cases of appeal the employee may appear in person with a representative if he/she so wishes.

13.5 The appeal hearing will be convened at the earliest convenient date, but normally within 8 weeks, unless there are exceptional circumstances where this would not be possible and both the Appellant and the Authority have mutually agreed to extend the timescale.

13.6 The decision of the appropriate Appeal Body, (Personnel Panel or Chief Officer), must be communicated in writing to the employee, within 5 working days, and shall be final within the procedures of Devon County Council.

14. SENDING HOME

14.1 An employee may be instructed by the local manager to leave the place of work immediately and stay away on normal pay until further notice, provided that:

- a. in the opinion of a senior officer, the employee's continued presence would be detrimental to Devon County Council's interests; and
- b. no officer with authority to implement suspension from duty is available; and
- c. the instruction is reported to the appropriate Designated Officer as soon as possible thereafter so that he/she can determine whether the employee is to be formally suspended or reinstated to the place of work.
- d. where such an instruction is given by the local manager it must be confirmed in writing within five working days, giving reasons for the instruction.

14.2 Wherever possible, advice should be sought from ER before such action is taken and alternatives to sending home should be considered first.

14.3 Within 5 working days of sending the employee home, the Designated Officer must, with advice from ER, review the situation and determine whether to keep the employee at home, impose suspension or allow the employee back to work.

15. SUSPENSION

15.1 Advice from ER should always be sought before suspending an employee.

15.2 It may be necessary to suspend an employee:-

- (a) when, following a discussion with ER, the manager agrees that it is either inappropriate or impossible to temporarily move the employee to another work location;
- (b) so as to be able to carry out an investigation where the continued presence of the employee could obstruct a full investigation;
- (c) where the employee is the subject of investigation by the police and the alleged offence is considered relevant to the duties of the individual as an employee;
- (d) to prevent discussion, harassment or intimidation of witnesses;
- (e) to prevent tampering with evidence;
- (f) where it is prejudicial to Devon County Council's interests for the employee to remain at work;
- (g) when alleged misconduct is such that the outcome may be dismissal or a recommendation to dismiss.

None of these reasons would lead to automatic suspension and each case should be decided on the facts.

15.3 Suspension will be on normal pay.

15.4 Suspension from duty is a neutral act which is not a disciplinary action but it is a serious step that may be taken only by an appropriate officer with delegated authority to dismiss, after referral to ER. Whenever possible, a meeting should take place with the individual and alternatives to suspension should be considered.

15.5 The employee must be advised of any decision to suspend and any conditions attached to the suspension, ideally in person. The employee may give their views in person or in writing as appropriate. The reasons for the suspension must be confirmed in writing. The letter should indicate that the act of suspension is a neutral act and does not imply guilt.

15.6 An agreed senior member of staff, not involved in the case, should be nominated to maintain contact with the employee, i.e. sending notes of team meeting, etc., but not to discuss the circumstances of the suspension. The name of a member of the ER Service will also be provided to the employee if s/he wishes to seek advice on procedural matters.

15.6 Where suspension is imposed, it can only be removed by a Designated Officer. Designated Officers will be responsible for monitoring the appropriateness and length of any suspension.

For detailed management guidance supporting this policy sees:-
http://www4.devon.gov.uk/private/corporate/policy/hr/conduct/mgrguide_home_page.shtml