

Hartlepool Jobs and Skills Service



Learner Disciplinary Policy & Procedure

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1. PURPOSE

This policy and procedure applies to all learners enrolled on programmes and/or courses within the Council's Jobs & Skills Service. This policy and procedure intends to provide a fair and consistent basis for dealing with disciplinary issues relating to a learner.

2. INTRODUCTION

This policy deals with conduct that is either unsatisfactory or fails to meet reasonable standards. Discipline is about maintaining acceptable standards within the Council's Jobs & Skills Service, and its main aim is to bring about permanent change in the conduct of a learner through the warnings given rather than simply punishing the learner.

3. MINOR MISCONDUCT

Informal guidance issued by managers about minor learner misconduct issues is outside the remit of this policy. Any minor misconduct issues should be addressed verbally and, if necessary, recorded in supervision notes and maintained within the learner's file or on Tribal.

4. SUSPENSION

In cases where a period of suspension is considered necessary:

- This period should be as brief as possible
- It should be kept under review.

A learner may be suspended if:

- It is considered that an act of gross misconduct may have occurred (See Appendix A).
- The learner is the subject of an investigation by the Police, which may lead to charges being taken, which could affect the tenability of their learning within the Council's Jobs & Skills Service.
- The learner appears to need to be more capable of undertaking the requirements of the course and/or paid or unpaid work placement duties relating to their course without presenting a serious risk to themselves or to others.
- A further act of misconduct (same or similar) may have taken place, the learner has on record a current final warning, and it is considered that they should be removed from their programme and/or course because of the risk to the learner, or other persons, or the work of the Council.

- It would be difficult to carry out a full investigation with the learner remaining on their programme and/or course, or the learner has the opportunity to prevent or hamper an investigation, e.g. where it is considered possible that the learner may influence witnesses or interfere with relevant evidence. There was a likelihood of further instances if the learner remained on their programme and/or course, e.g. where a cooling-off period is beneficial.
- If deemed appropriate by the Service Manager.

5. SAFEGUARDING

Suppose the matter under investigation relates to a safeguarding issue (harm or risk to children or vulnerable adults). In that case, the matter may be referred to the Council's Designated Officer (Level 3), Safeguarding Board, Disclosure & Barring Service and/or any other relevant professional body such as Ofsted.

6. RECORDING OF MEETINGS

The Council does not support the use of recording devices at any meetings relating to a Learner's Disciplinary.

7. DISCIPLINARY INVESTIGATIONS

It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. Disciplinary action will be taken against a learner once the case has been investigated as fully as required. In some cases, there will not be any requirement to hold an investigatory meeting with the learner before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the Council's Jobs & Skills Service for use at any disciplinary hearing. The investigation will normally be carried out by an Investigating Officer(s) designated for this purpose. For the Hartlepool Jobs & Skills Service, the lead Investigating Officer will be the Lead Officer - Skills. The purpose will be to establish the facts promptly and before memories fade, considering statements of any relevant witnesses.

The Service Manager will notify the Lead Officer - Skills of when to commence the investigation and agree on an investigation plan and the scope of the investigation, which will be documented and maintained as part of the investigation.

At any investigatory interview, the learner may be accompanied by a representative such as a family member, carer, guardian and/or friend.

The learner will be notified of the nature of the complaint against them at the earliest opportunity. In certain circumstances, the learner may only be notified that an investigation is underway once deemed appropriate. This will normally be in cases where there is a need for strict confidentiality and/or where the Police may be involved, for example, child protection issues, fraud, theft or other financial

irregularities. In all cases, verbal notification will be followed up in writing as soon as possible.

Following the investigatory process, the Investigating Officer (Lead Officer - Skills) will produce a report that establishes the facts supported by evidence where available. The report should also make recommendations and confirm if a disciplinary hearing needs to be considered. The Service Manager will then make the final decision as to whether a disciplinary hearing will be held.

If learners report being unfit to engage in the process due to health issues, they will be referred to relevant services such as talking therapy services.

It is reasonable management instruction for a learner to attend investigatory interviews. There may be occasions when a learner is repeatedly unable or unwilling to attend a meeting. This may be for various reasons, including illness or a refusal to face up to the issue. Managers will need to consider all facts and come to a reasonable decision on how to proceed. Considerations may include:

- The seriousness of the disciplinary issue is under consideration.
- The learner's general conduct and behaviour whilst on their programme and/or course.
- Medical opinion on whether the learner is fit to attend the meeting.
- How similar cases in the past have been dealt with.

When a learner is unavailable to attend a meeting, management may conclude that a decision will be made based on available evidence.

Learners who provide information for a disciplinary investigation should be aware that if the matter does progress to a Disciplinary Hearing, the information they provide will, in normal circumstances, be disclosed.

8. RESPONSIBILITIES OF A DISCIPLINE HEARING

Only the Head of Service or Service Manager can undertake the role of Hearing Officer (Chair) at a Disciplinary Hearing.

The Hearing Officer is responsible for:

- Reviewing the investigation details and deciding in the first instance whether a disciplinary hearing will be held
- Confirming to the learner in writing their decision
- Chairing the hearing meeting.

If a disciplinary hearing is scheduled, the learner should be invited to attend in writing with the right to be accompanied by a representative. The learner should be informed of the right to arrange for witnesses to attend the hearing and/or submit written statements as evidence.

The Hearing Officer will decide if any sanctions are to be applied in accordance with the 'Stages in the Formal Procedure'.

The Hearing Officer can either verbally confirm their decision to the learner on the day, following an adjournment or in writing within five days following the hearing. In either case, a written outcome letter to the learner is required advising the right of appeal.

Guidance on the administration of Disciplinary Hearings is shown in Appendix B.

9. STAGES IN THE FORMAL PROCEDURE

First Written Warning: A first written warning may be given only by a Hearing Officer following a disciplinary hearing where misconduct is confirmed. The warning will be confirmed in writing and will set out the nature of the misconduct, the improvement(s) required, the likely consequences of further misconduct and any time limits imposed.

Final Written Warning: A Final Written Warning may be given only by a Hearing Officer following a Disciplinary Hearing where misconduct is confirmed. Such a warning may be given if the breach of discipline or unsatisfactory conduct is so serious that a First Written Warning would not be appropriate in the circumstances or where there has been further unsatisfactory conduct or a breach of discipline following a First Formal Written Warning.

The Final Warning will be confirmed in writing and will set out the nature of the misconduct, the improvement(s) required; any time limits imposed and will make it clear that further misconduct could lead to a recommendation that the learner be dismissed.

Dismissal: Only the Head of Service or Service Manager may hear cases that may result in a dismissal. Dismissal is normally invoked:

- Where there has been gross misconduct.
- Where the learner has on record a current final warning for the same or similar type of disciplinary incident.

Gross misconduct will normally result in summary dismissal, that is, dismissal without notice. Where a learner has a First Written Warning, dismissal may be considered instead of a Final Written Warning if the breach of discipline or unsatisfactory conduct is so serious that a final warning would not be appropriate in the circumstances.

10. APPEALS

There shall be a right of appeal against all warnings and dismissals given.

Appeals must be notified, in writing outlining the grounds of appeal, to the Head of Service or Assistant Director (Preventative and Community Based Services) within 14 days of notification of the warning/dismissal.

If no appeal is received within this period, the learner/appellant will lose the right of appeal. If an appeal has not been received within 14 days, then it will be for the learner/appellant to demonstrate that they were not notified of the decision in time.

All appeals must be lodged by the learner concerned and cannot be lodged by other parties or representatives on behalf of the learner. The appeal will be arranged as soon as practicable, and the learner will receive a minimum of fourteen days' notice of the appeal hearing date. This period may be reduced by mutual agreement.

Appeals against Written Warnings or Dismissal will be heard in accordance with Appendix C.

11. ATTENDANCE AND REPRESENTATION

Learners may arrange to be represented at all stages of the formal procedure relating to suspension (where possible), disciplinary investigation, hearings and appeal.

Where unreasonable delay might be caused by awaiting the availability of the chosen representative, management reserves the right to proceed with the hearing/appeal on the date set and to advise the learner to seek an alternative representative. It would be reasonable to rearrange the date at least once if there are issues in relation to availability. Therefore, the opportunity should be given to the representative to provide an alternative date within five days.

Where the learner refuses to attend or fails to attend without giving an acceptable reason, an investigatory meeting/interview, a Disciplinary Hearing or appeal, the relevant Officers concerned may proceed with the investigation/hearing and make a decision based on such evidence and information as is available to them at the time. Where the learner refuses to attend or fails to attend without giving an acceptable reason at the Appeal Stage, the learner may lose the right of appeal.

12. DISCIPLINARY RECORD & TIME LIMITS

The following maximum time periods will normally apply to warnings given, and the Disciplinary Officer should select an appropriate time period taking into account the type of offence:

- First written warning – normally one year
- Final written warning – normally two years maximum.

If the matter relates to a safeguarding issue (harm or risk of harm to children or vulnerable adults, then it may either require a referral (if not already notified) or an

update to the Council's Designated Officer (Level 3), Safeguarding Board, Disclosure & Barring Service and/or any other relevant professional body such as Ofsted.

Records will not be taken into account for disciplinary purposes after the above time periods have been exhausted, providing that no further same or similar type of disciplinary incident has occurred during the time period.

Where a disciplinary investigation begins before the expiry of a previous warning, it will be taken that the warning was valid for the current disciplinary proceedings, provided it is the same or a similar matter.

Where a learner who has received a warning is subsequently absent from their learning because of sickness or a break in learning during the currency of the warning for, in the aggregate, more than ten days, the amount of absence above ten days shall be added to the original time period specified in the warning. This will ensure the learner has the full specified period to demonstrate satisfactory conduct.

Records for disciplinary matters will be held for a minimum of 2 years except for safeguarding (children & vulnerable adults) issues which will remain on the relevant learner's file.

13. CRIMINAL OFFENCES

Where it is believed that a learner may have committed an offence against the law whilst on their programme and/or course, this will be considered in its context within the Disciplinary Policy. The Head of Service or Assistant Director (Preventative & Community Based Services) will be advised of such instances and will consider reporting the matter to the Police with the advice of parties such as Legal and/or Human Resources.

The fact that a learner has been cautioned, charged, remanded in custody or has been convicted of an offence outside their programme and/or course shall not be regarded as an automatic reason for disciplinary action or dismissal.

Parties such as Legal and/or Human Resources should be consulted in such cases. Consideration must be given as to whether the offence has any connection with, or bearing upon, the learner's programme and/or course work and/or the tenability of their continued involvement within the Council's Jobs & Skills Service.

Where appropriate, a disciplinary investigation should be carried out to consider the matter. In such cases, where a Disciplinary Hearing is held, disciplinary action need not await the outcome of criminal court proceedings.

14. EQUALITY IMPACT ASSESSMENT

This policy does not disadvantage any learner who may have a protected characteristic under the Equality Act 2010.

15. MISCELLANEOUS ISSUES

In the event of a learner's representative having an issue relating to a disciplinary investigation, then in the first instance, the concern should be raised with the Head of Service. Suppose the representative is not satisfied with the decision of the Head of Service. In that case, this will be escalated to the Head of Service or Assistant Director (Preventative and Community Based Services) for a final decision. However, the disciplinary process will not be suspended during this time.

In cases of fraudulent activity that may result in a potential insurance claim, the Head of Service will notify their insurer at the earliest opportunity. A delay in this notification may invalidate any future insurance claim.

APPENDICES

Appendix A - Examples of Gross Misconduct

Appendix B - Administration of Disciplinary Hearings

Appendix C - Appeals against Warnings or Dismissal

APPENDIX A – EXAMPLES OF GROSS MISCONDUCT

Gross misconduct is the conduct of such a serious nature by a learner enrolled on a Council Jobs & Skills Service programme and/or course that the Council could not tolerate the continuation of that learner on their programme and/or course and could not tolerate a repetition of such conduct. Gross misconduct will normally result in summary dismissal, that is, dismissal without notice.

The list below contains examples of the type of conduct which will normally be considered to be gross misconduct and will, therefore, normally result in summary dismissal:

- a) Acts of violence or intimidation whilst a learner is on a programme and/or course against staff, other learners or members of the public
- b) Fraud or serious theft, e.g. deliberate falsification of documents to claim remitted fees,
- c) Acts of cheating or plagiarism
- d) Malicious damage to the property of staff, learners or the Council
- e) Serious personal harassment or bullying.
- f) Conviction of a criminal offence relating to duties on a course or work placement (either paid or unpaid) or of an offence outside the learner's course or work placement renders the learner unable to complete the tasks and duties of their programme and/or course.
- g) Failure to carry out duties resulting in individual(s) being at risk of serious harm.
- h) Whilst on a programme and/or course or on a work placement, being drunk or otherwise incapacitated by the abuse of alcohol or drugs.
- i) Abandoning their course and place of work without permission or acceptable reason.
- j) Deliberate falsification of information on the enrolment application
- k) Wilful negligence or refusal to carry out a reasonable instruction or serious and deliberate breaches of health and safety rules and other regulations/rules of the Council, e.g. data protection requirement.
- l) Deliberate access to or download pornographic, offensive or obscene material.
- m) Serious insubordination.
- n) Serious misuse of the Council's property or name.
- o) Action or conduct which may bring the organisation into disrepute, including any criminal charges or investigations.
- p) Serious breach of confidence, such as disclosure of confidential or personal information to public sources/persons not authorised to receive such information
- q) Unauthorised accessing and/or usage of data.

This list is neither exclusive nor exhaustive.

APPENDIX B – ADMINISTRATION OF DISCIPLINARY HEARINGS

1. When a disciplinary hearing is to be held, the learner should be informed in writing and given reasonable notice of the hearing date, time and place (5 working days would normally be the minimum notice given).
2. Where further written statements are to be submitted in evidence, the statement(s) should be copied to the Designated Officer/learner as appropriate at least 2 days before the hearing. This will save time at the hearing and also allow both parties a reasonable time to consider the content of the statement(s).
3. Witnesses may not be called to give oral evidence to a disciplinary hearing unless requested. If a learner is to rely on a witness being present at the hearing, then they should request their attendance in writing to the Hearing Officer.
4. Where witnesses are to be called by either party, the number of witnesses involved should be confirmed to the other party at least two days before the hearing so that administrative arrangements can be made to accommodate the witnesses and to alert each party to the involvement of witnesses.
5. Suppose an individual wishes to bring witnesses to a disciplinary hearing who were not part of the investigatory process. In that case, it should be noted that it is their responsibility to inform the witness of the time and date of the hearing and for them to agree/arrange the witnesses' attendance.

APPENDIX C – APPEALS AGAINST WARNINGS OR DISMISSAL

1. Administration

Appeals against warnings or dismissal must be notified to the Head of Service or Assistant Director (Preventative & Community Based Services) in writing (by letter or email) within 14 days of the date of the letter confirming the disciplinary action. If no appeal is received within this period, the learner will lose the right of appeal. It will be for the learner to demonstrate that they should have been notified of the decision in time. All appeals must be lodged by the learner concerned; other parties or representatives cannot lodge appeals on behalf of the learner. An appeal hearing will then be arranged, and the learner will receive at least 14 days' notice of an appeal hearing and may be represented by a representative. The notice period of 14 days may be reduced by mutual agreement. A fundamental aim of the appeals procedure is for the Council's Jobs & Skills Service to not only be fair but also to be seen to be fair in dealing with its learners. Where the procedure is silent on any point which may arise during the hearing, it is for the Hearing Officer to decide, in the light of any representations made by management and the learner and/or representative, what course of action should be followed.

2. Appeals against Warnings or Dismissal

Where an appeal against any form of warning or dismissal is received within the required timescale as shown within section 1 of this appendix, the following procedure will be as follows:-

- a) The Head of Service or Assistant Director (Preventative & Community Based Services) will arrange and Chair the Appeals meeting.
- b) Service Manager or Lead Officer – Skills shall state the case
- c) Whilst stating the case, if appropriate, the Service Manager may call witnesses. The procedure for each witness shall be as follows:-
 - Learner and/or learner's representative to question.
 - Head of Service or Assistant Director (Preventative & Community Based Services) to question
 - Service Manager or Lead Officer – Skills to re-examine
 - Witness to leave the room.
- d) The learner and/or learner's representative may ask questions of the Service Manager and/or Lead Officer – Skills.
- e) The Head of Service or Assistant Director (Preventative & Community Based Services) may ask questions of the Service Manager and/or Lead Officer – Skills.

- f) The learner and/or representative to state the case. Whilst stating the case, the learner and/or representative may call witnesses, and the procedure for each witness shall be as follows:-
- Learner and/or representative to question.
 - Service Manager and/or Lead Officer – Skills to question.
 - Head of Service or Assistant Director (Preventative & Community Based Services) to question
 - Learner and/or representative to re-examine
 - Witness to leave the room.
- g) The Service Manager and/or Lead Officer – Skills may ask questions of the learner and/or representative and vice versa.
- h) The Head of Service or Assistant Director (Preventative & Community Based Services) may ask the learner and/or representative questions.
- i) The Service Manager and/or Lead Officer – Skills to have the opportunity, to sum up their case if they wish.
- j) The learner and/or representative to have the opportunity to sum up their case if they wish
- k) The Service Manager and/or Lead Officer – Skills and learner and representative to withdraw
- l) The Head of Service or Assistant Director (Preventative & Community Based Services) to deliberate recalling Service Manager and/or Lead Officer – Skills and learner/representative only if clarification of evidence already given is required. In such instances, both parties should be recalled even though clarification may be required from only one side.
- m) The Head of Service or Assistant Director (Preventative & Community Based Services) shall announce his/her decision to both sides unless further deliberation is needed, in which case both sides will be advised of this.
- n) The decision of the Head of Service or Assistant Director (Preventative & Community Based Services) will be notified to both sides in writing within seven days of the appeal hearing. The Head of Service or Assistant Director (Preventative & Community Based Services) decision will be final and without the right of appeal.

Where points of clarification that affect the understanding of the case need to be raised, the Head of Service or Assistant Director (Preventative & Community Based Services) may ask questions at any point during the proceedings but otherwise will raise questions at the appropriate stages. Any matters of procedure not covered above will be for the Assistant Director of Preventative & Community-Based Services to decide.