



Derby City Council

**Personnel Committee
4 September 2018**

ITEM 08

**Report of the Strategic Director of Corporate
Resources**

Changes to Disciplinary and Dismissals Policy and Guidance

SUMMARY

- 1.1 The HR team are in the process of reviewing and updating the Council's employment policies. The review has been prioritised in line with changes in legislation and/or case law, best practice approaches and the length of time since the policy was reviewed. The review is also reflected in the Council's corporate policy register.
- 1.2 This report sets out the both the main changes, and the reasons for the changes, to the Disciplinary and Dismissals Policy and guidance. The policy and guidance are attached at Appendix 1 and 2 respectively. The policy and guidance have been discussed and agreed in principle with the Trade Unions at the Policy Working Group.

RECOMMENDATION

- 2.1 To note that the proposed main changes to the revised Disciplinary and Dismissals Policy are the removal of the verbal warning as a sanction; greater emphasis on trying to resolve conduct issues at an informal level; and the removal of action short of dismissal.
- 2.2 To approve the revised policy and guidance and note that subject to approval, the revised policy and guidance will publicised on the Council's intranet site.

REASONS FOR RECOMMENDATION

- 3.1 Dealing with minor breaches of conduct in an informal way enables managers to address concerns more quickly after the breach has occurred than the formal investigation and hearing process allows. Confirmation by the manager of the improvement of behaviour required can also be given sooner, and the employee more quickly understands what is required of them.
- 3.2 Removing both the sanction of verbal warning, and the non-contractual sanction of action short of dismissal, makes the Disciplinary and Dismissals Policy more fit for purpose and less at risk of challenge.

SUPPORTING INFORMATION

Emphasis on informal approach

- 4.1 The main purpose of the Disciplinary and Dismissals Policy is to encourage improvement in an employee whose conduct falls below acceptable standards.
- 4.2 The revised emphasis on the informal part of the Disciplinary and Dismissals Policy encourages managers to deal with potential conduct issues as and when they arise. Managers are provided with a template for managing potentially difficult situations and conversations with their team members.
- 4.3 In the majority of circumstances it is preferable to manage conduct issues informally. The statutory ACAS code of practice on Disciplinary and Grievance procedures advises that potential disciplinary matters are dealt with informally initially. There will always be situations where the formal action is required in the first instance, but for many breaches of conduct the use of formal action should be considered a last resort rather than the first option.
- 4.4 Encouraging both managers and employees to utilise the informal part of the Disciplinary and Dismissals policy to address conduct issues as and when they arise, has the effect of reducing the potential for cases to escalate to the point where formal action becomes necessary. This approach to the management of conduct also serves to improve employee relations and encourages managers to take a more pragmatic approach to the management of employee behaviour in their teams.
- 4.5 A rush to formal action may be considered procedurally unfair at an Employment Tribunal where an employer has failed to reasonably consider options such as alternative informal measures.

Removal of verbal warning

- 4.6 The current policy has provision for a verbal warning to be issued as an outcome to a formal disciplinary process, and the warning lasts for six months. This level of warning is rarely used as an outcome to the formal disciplinary process. In addition, a breach of conduct or behaviour which results in a verbal warning would be addressed more appropriately through the revised informal approach. Removing this level of warning from the policy recognises the obsolete nature of the sanction, and supports the use of the informal approach where relevant.

Removal of action short of dismissal

- 4.7 Within the current policy the chair of a disciplinary hearing may have considered action short of dismissal in situations where, were it not for mitigating circumstances, the employee may have been dismissed as a result of their misconduct. Demotion, transfer to another job or loss of seniority may be allowed as defined in the contract. However, such a term is not included in the Council's employment contracts.

- 4.8 An action short of dismissal decision has on occasion resulted in an employee being advised they can't retain their substantive job, and they have been placed at risk on the Council's redeployment register. This has the effect of dismissing the employee despite being advised that action short of dismissal was the outcome of the hearing. In similar circumstances in future, the chair will need to make a decision either to dismiss the employee from the Council's employment or issue a final written warning.

OTHER OPTIONS CONSIDERED

- 5.1 Do nothing and retain the current policy and guidance. This is not considered to be an appropriate approach, as it fails to emphasise the benefit of the informal approach where relevant, and it maintains a potentially outdated practice of action short of dismissal.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Other(s)	Paul McMahon Not applicable Liz Moore Head of HR Not applicable
For more information contact: Background papers: List of appendices:	Nyree Treece 01332 643673 nyree.treece@derby.gov.uk None Appendix 1 – Disciplinary and Dismissals Policy Appendix 2 - Disciplinary and Dismissals guidance – informal

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IMPLICATIONS

Financial and Value for Money

- 1.1 None cashable efficiency savings.

Legal

- 2.1 Employers are required by law to provide a written policy for the management of disciplinary and dismissals in the workplace.

Personnel

- 3.1 As set out in the report.

IT

- 4.1 None directly arising.

Equalities Impact

- 5.1 A review of the EIA will be carried out with the Equality and Diversity Lead before implementation of the policy.

Health and Safety

- 6.1 None directly arising.

Environmental Sustainability

- 7.1 None directly arising.

Property and Asset Management

- 8.1 None directly arising.

Risk Management and Safeguarding

- 9.1 Any disciplinary cases that are considered procedurally unfair can result in costly awards made against the Council at Employment Tribunals.

Corporate objectives and priorities for change

- 10.1 To be a modern, flexible and resilient Council we need to ensure all of our processes and procedures are agile and fit for purpose.