

Managing Misconduct Policy

Policy statement	<p>Hampshire County Council is committed to taking robust action against unacceptable behaviour and conduct which is wilful or negligent. This policy defines Hampshire County Council's approach to the management of such behaviour which falls below the standards required or is in breach of policies or rules.</p>
Scope	<p>All employees employed by a Hampshire County Council department (i.e. outside of schools) on the following terms and conditions;</p> <ul style="list-style-type: none">• EHCC• Soulbury• Teachers
Policy outcomes	<p>The aims of this policy are to:</p> <ul style="list-style-type: none">• improve and maintain good conduct and behaviour through early intervention and management action• help employees to understand the rules and standards required• address issues of misconduct within a fair and effective framework• achieve appropriate outcomes for the organisation• deter misconduct
Check which policy to use	<p>Unsatisfactory performance due to a lack of skill, knowledge, experience or appropriate behaviors should be addressed using the Managing Performance Policy.</p> <p>Poor performance due to health issues should be addressed through the Managing Sickness Absence Policy.</p> <p>Concerns raised by an employee about a decision or action taken when applying this policy should be addressed through the meetings or appeal process held under this policy. A separate</p>

workplace issue (e.g. grievance) should not be raised.

Key definitions

Misconduct can be:

- wilful - which includes
 - lapses of conduct (an employee's approach to their work and the way they perform their duties)
 - unacceptable behaviour (towards others)
 - unacceptable work performance which is deliberate and not simply a lack of competence
- negligent or by omission – which includes
 - careless or reckless behaviour
 - failure to act which has a significant adverse impact on a service or an individual

Gross misconduct - is an act of misconduct or indiscipline which is so serious in nature that it fundamentally damages the employment relationship and justifies dismissal without notice.

Calendar days - where reference is made to calendar days, these are defined as Monday to Sunday, including Bank Holidays or Public Holidays. This is consistently applied irrespective of an employee's work pattern.

Hampshire County Council continuous service - earliest date when an employee began continuous service (no breaks) with Hampshire County Council.

Safeguarding

Safeguarding allegations raised in relation to employees who work with children or vulnerable adults must be reported to:

- the Local Authority Designated Officer (LADO) where it involves children
- the Adult Services Safeguarding Team where it involves adults

They will maintain an oversight of cases and provide advice and guidance in liaison with social care and the Police.

There may be up to three possible processes involved in responding to a safeguarding concern or allegation which may run concurrently:

- a Police investigation of a possible criminal offence
- enquiries and assessment by the Council's safeguarding teams about whether a child or adult is in need of

protection/support

- an internal employment investigation – Managing Misconduct Policy

When applying the Managing Misconduct Policy, local and national safeguarding requirements, including the actions of the Police, must be observed. This may include delaying notifying the employee of the nature of an allegation until the consent of other agencies has been obtained.

Criminal activity

Where the conduct is believed to be criminal, the employee is reported to the Police by the manager.

Suspension or alternative arrangements

Where concerns may amount to gross misconduct, suspension or alternatives to suspension may be necessary.

Both are neutral and precautionary acts that may be put in place at any point during a disciplinary process once the preliminary enquiry or investigation has established that the misconduct concern may amount to [gross misconduct](#). The purpose is to enable the investigation to take place and to protect the Council and the employee.

The manager must meet immediately with the employee to inform them that they are being suspended or of the alternative arrangements being put in place. The employee has no statutory right to be accompanied. However a companion (a Hampshire County Council work colleague or a trade union representative) is normally accommodated where it does not cause any unnecessary delay. The manager sends the employee a letter to confirm the decision regarding suspension or alternative arrangements and suspends the employee's IT account and security pass as appropriate.

During suspension or whilst alternative arrangements are in place, an employee continues to receive full contractual pay and is required to be available for meetings and to follow normal reporting procedures such as sickness absence and annual leave.

Formal action concerning a trade union representative

Where there are concerns involving an employee who is a trade union representative, advice must sought from HR Operations before taking formal action.

Policy stages

The first stage is a preliminary enquiry.

There is one further stage when managed informally:

- informal discussion

There are three further possible stages when managed formally:

- investigation
- formal meeting
- appeal meeting

There are some differences in the way a disciplinary concern involving an employee with [less than two years service](#) is managed.

Preliminary enquiry

The manager must carry out a brief preliminary enquiry to identify the initial facts as quickly as possible and normally within the same working day / shift.

In exceptional circumstances, where further time is needed to complete the preliminary enquiry to establish whether concerns may amount to gross misconduct (and therefore possible suspension), the employee can be expected to stay away from work for a maximum of up to **5 calendar days** while the preliminary enquiry is completed.

The preliminary enquiry enables the manager to decide whether:

- no apparent substance to the concern and therefore no further action is required
- the misconduct can be managed through an informal discussion or whether
- the misconduct is potentially more serious and justifies progression to a formal disciplinary

On completion of the preliminary enquiry the manager must consider whether [suspension or alternative arrangements](#) are necessary.

Informal discussion

Where the misconduct is minor and has only happened on one or two occasions, the manager must hold an informal discussion with the employee. The manager must inform the employee of the conduct or standard expected.

The employee has no statutory right to be accompanied at the informal meeting. However the employee can contact their union, where they are a member, for advice.

Investigation

Where the misconduct is potentially more serious or there are repeat occurrences of minor misconduct following an informal discussion, the concern must be managed formally.

The employee must be informed in writing of the nature of the issue/s and the purpose of the investigation before it starts. They do not have a statutory right to be accompanied at an investigation meeting however a companion (a Hampshire County Council work colleague or a trade union representative) can normally be accommodated where it does not cause delay in scheduling the investigation meeting.

An investigating officer is nominated to carry out an impartial investigation and write a record of their findings. The length and detail of the investigation and record is proportionate to the nature, complexity and seriousness of the misconduct concern.

The investigation is normally carried out within a maximum of **26 calendar days** unless there are exceptional circumstances in which case a reasonable timescale can be agreed between the investigating officer and the employee.

Upon completion of the investigation, the manager decides whether there is a case to answer and if so, the case should progress to a formal meeting. Alternatively the manager may decide that a different form of management action is more appropriate.

Formal meeting

Where the manager believes the investigation continues to support a formal disciplinary, the next stage is to hold a formal meeting with the employee.

The manager will write to the employee to invite them to the formal meeting, enclosing any management documents or records.

The employee has a statutory right to be accompanied at the formal meeting by a trade union representative or a Hampshire County Council work colleague.

The employee, or their companion, must submit relevant information to arrive at least **4 calendar days** before the meeting.

Outcome of a

The chair of the meeting will decide whether the allegation/s is

formal meeting

upheld / proven or unfounded / unproven or unsubstantiated. They will also decide what, if any formal disciplinary action will be taken.

The employee may receive a first or final written warning that their behaviour or conduct is unacceptable and must improve. The warning will be kept on their ePF for a specified number of months as agreed by the chair.

The employee may be dismissed with notice on the grounds of misconduct or summarily dismissed on the grounds of gross misconduct. In such cases the manager must cancel the employee's IT account and security pass immediately, if they have not already done so.

At the meeting the chair must advise the employee of:

- the outcome
- their right of appeal
- the date by which an appeal must be submitted, which is within **10 calendar days** starting from the day after the meeting.

The details of the meeting and the outcome are confirmed in writing.

Referrals to the Disclosure and Barring Service

Where an employee is dismissed or summarily dismissed in relation to an allegation of a safeguarding nature, there may be a duty to refer the employee to the Disclosure and Barring Service.

Referrals to professional bodies

Some professions are required to be registered with a professional body in order to practice. During or upon completion of the disciplinary process, where there are concerns about an employee's fitness to practice, there may be a duty to refer the employee to their professional body.

Right of appeal

The employee has a right to appeal against any formal disciplinary action. They must have specific grounds for making an appeal and identify supporting evidence.

*An employee must ensure their written appeal is received by the chair within **10 calendar days** of the meeting, starting from the day after the meeting. The full reasons for the appeal must be given along with the supporting evidence.*

An appeal will be heard by a panel of independent senior

managers.

Appeal meeting

The chair of the meeting must write to the employee to invite them to an appeal meeting.

The employee has the statutory right to be accompanied at an appeal meeting by a trade union representative or a Hampshire County Council work colleague.

Appeal against a first or final warning - the employee, or their companion, must submit their information to arrive at least **4 calendar days** before a meeting.

The manager and employee are expected to provide details of any significant issues and relevant papers in advance of the meeting. Management documents are supplied with the invitation letter.

The employee, or their companion, must submit their information to arrive at least **4 calendar days** before a meeting.

Outcome of an appeal meeting

The chair of the meeting will decide whether the appeal is upheld or not.

The chair of the meeting must advise the employee of the outcome at the meeting, or make an alternative arrangement if the decision is not available within this timescale. The decision will be confirmed in writing.

Less than two years continuous service

The same policy stages and process for managing misconduct are applicable to employees with less than two years' continuous service.

The areas of difference are:

- all formal cases will be treated as potential dismissal
- misconduct of a less serious nature may warrant dismissal or receive a warning
- where a warning is issued, this will be a formal written warning (there is not a distinction between a first or final)
- an employee only has the right to appeal against a dismissal decision, not against a warning. The same principles for the appeal meeting apply.

Related documents To help apply this policy you may find it useful to read the

following:

- Safeguarding portal

Support

Employees:

Queries should be directed to your line manager.

Access to free, confidential and impartial Employee Support is available to all employees. Please visit the webpages for further information <http://www3.hants.gov.uk/occupational-health/employee-support.htm>

Your trade union or professional association may be able to provide you with additional support.

Managers:

Further information is available in the Managers' How to guide – Managing Misconduct.

Advice on remaining queries can be directed to HR Operations on 01962 813915 or hradvice@hants.gov.uk.

All:

Support in holding a meaningful conversation can be found on the [Real conversations](#) Hantsnet pages.

Policy Governance

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Employees of non Hampshire County Council bodies are excluded from this policy and should refer to their own employer's policies and procedures.