

Thanet District Council Some Other Substantial Reason (SOSR) Policy & Procedure

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Key Points:

- There are times when an employee may be fairly dismissed for a reason which does not relate to conduct, capability, performance or redundancy and therefore is not covered by the council's standard employment policies.
- Employees have a statutory right to be accompanied by a trade union representative or workplace colleague at any formal meeting which could result in their dismissal, including appeals.
- The HR team should be contacted at the earliest opportunity and prior to initiating any action under this policy.
- Confidentiality will be given the utmost importance at all stages of the procedure.

1. Introduction

Although rare, there are times when an employee may be dismissed for a reason which does not relate to conduct, capability or redundancy and therefore is not covered by the council's standard employment policies. In such circumstances dismissal for some other substantial reason may be a fair reason for terminating employment.

This policy and procedure provides a framework to ensure that, in these circumstances, the dismissals are carried out fairly, sensitively and in accordance with an employee's statutory and contractual rights.

2. Scope

This policy and procedure applies to all employees with the exception of the Chief Executive, Section 151 and Monitoring Officer, for whom separate arrangements apply.

3. Roles & Responsibilities

Employees will:

- Strive to deliver excellence in everything that they do;
- Cooperate fully in meetings;
- Make their manager aware as soon as reasonably practicable of any change in their circumstances which might impact their ability to carry out their duties.

Managers will:

- Ensure they and their employees act in accordance with this policy;
- Regard dismissal as a last resort;
- Seek guidance from the HR team as soon as they become aware of an issue which may require initiating this policy;
- Make arrangements for their employees to be released from normal duties as appropriate, if involved in this process;
- Make any necessary arrangements for hearings, such as arranging note takers, booking a venue, sending meeting requests and so forth;
- Attend training on the application of this policy.

HR will:

- Monitor relevant employment legislation and support the council to review and amend this policy as appropriate;
- Provide support, guidance and training to the council and its employees in the interpretation and application of this policy;
- Ensure a consistent and fair approach to the application of this policy;
- Support managers to investigate claims where individuals believe that they are being treated unfairly or unreasonably under this policy.

Service Directors & the Corporate Management Team will:

- Make suitable arrangements to ensure the appropriate application of this policy;
- Support managers to act fairly and consistently in relation to this policy;
- Participate, and/or encourage managers to participate in this process when required, ensuring release from normal duties where appropriate, to ensure the process is dealt with swiftly;
- Attend training on the application of this policy.

4. Examples of SOSR scenarios

4.1. Whilst not exhaustive, the following scenarios may be considered some other substantial reason (SOSR) dismissals:

- Where an employee has confirmed that they are not prepared to accept a change(s) in their working practices/contractual terms following a consultation process.
- Where the continued employment of an employee in a post they occupy would be in contravention of a statutory enactment. For example, where a driver has been banned from driving where driving is an essential part of the role.
- Where an employee has a sentence of imprisonment imposed on them and the matter did not fall within the remit of the disciplinary policy. For example, where an employee receives a sentence for a crime that is unrelated to their work and which does not bring the Council into disrepute but where it is not feasible to keep their position open for them for the duration of their sentence.
- Where there is a serious breakdown in a relationship between two (or more) employees or between an employee and a third party contractor, which is not due to conduct and/or performance and all reasonable steps to avoid a dismissal have been considered e.g. redeployment of one of the parties
- Where the end of a Fixed Term Contract does not give rise to a redundancy situation.
- Some other substantial reason (to be defined in each instance) not specified above.

5. Procedure

- 5.1. Prior to taking any formal action, the employee's line manager should meet with the employee informally to make them aware of the issue, to gather additional facts (where appropriate), to explore the potential for redeployment (where appropriate) and to make the employee aware that this could result in their dismissal.
- 5.2. If the manager determines that there is no other resolution but to move to dismissal, they should prepare a report detailing all of the facts of the case and any supporting information and arrange a hearing.
- 5.3. The employee will be invited to the hearing in writing with reasonable notice, usually of no less than three working days. The invitation will outline the reason(s) for their

- potential dismissal and a copy of the line manager's report will also be provided in advance of the hearing.
- 5.4. The hearing will be chaired by a manager with delegated authority to dismiss. This will usually be a Service Director or another member of the Corporate Management Team although the Head of Paid Service can delegate authority to dismiss to another manager if appropriate.
 - 5.5. Another manager not previously involved in the case will make up the panel and a member of the HR team may also be present.
 - 5.6. The employee can make submissions to the panel and call witnesses if appropriate. The panel should be informed of any intention to call witnesses and provided with any supplementary information in advance of the hearing.
 - 5.7. The panel will adjourn the hearing to consider the evidence presented to them. If the chair of the panel determines that further investigation and/or information is required before a decision can be made then this will be confirmed to the employee in writing along with a timescale for a decision to be made.
 - 5.8. The outcome of the hearing will be provided to the employee in writing within a reasonable timeframe, usually not more than five working days from the date of the hearing, and may be one of the following:
 - Dismissal from the existing post and re-employment in a different post at the same grade or at a lower grade without pay protection or in the same post but on different terms and conditions. The alternative post will be identified in the outcome letter and notice will be given prior to the new arrangements taking effect. If the alternative role is rejected during this period, the original SOSR dismissal will stand
 - Dismissal from the council with contractual notice.

6. Appeals

- 6.1. If the employee wishes to appeal against the outcome of the hearing, they should do so in writing to HR stating the reasons for their appeal no later than five working days after the outcome letter is received.
- 6.2. An appeal is not a re-hearing of the original case but instead should be based upon one or more of the following principles:
 - The dismissal is disproportionate or inconsistent with sanctions imposed on other employees in similar circumstances
 - New evidence has come to light since the original hearing which needs to be considered
 - The Council has failed to follow its policy and procedure
- 6.3. The appeal hearing will be chaired by a manager of the same level or above to the chair of the disciplinary hearing, depending on the circumstances of the case. Another officer or manager not previously involved in the case will make up the panel. An HR representative will provide advice and guidance on policy and process, including on the appropriateness of the panel members.
- 6.4. The appeal hearing will be arranged in a timely and reasonable manner.
- 6.5. The employee will be given reasonable notice in writing of no less than three working days of the appeal hearing detailing who will be conducting the hearing, arrangements in relation to any documents to be forwarded prior to the hearing (if

- not already enclosed) and the employee's right to be accompanied by either a trade union representative or workplace colleague.
- 6.6. At the hearing, the employee will be asked to give their reasons for appealing, referring to any relevant evidence and the chair of the panel may be asked to attend the hearing to explain the rationale for their decision.
 - 6.7. Once all evidence has been considered, the hearing should be adjourned to allow the panel to consider the information put before them. If the panel requires further information or clarification prior to making a decision, this should be sought as a matter of urgency and the employee advised that there will be a delay in reaching an outcome.
 - 6.8. Once a decision has been reached, the hearing should be reconvened or a letter written to the employee to inform them of the outcome.
 - 6.9. The outcome of the appeal could be that the appeal is upheld or it is not upheld. This will be confirmed in writing within five working days of the hearing unless there has been a delay due to additional evidence or clarification being sought.
 - 6.10. The decision of the appeal hearing is final and there is no further right of appeal.
 - 6.11. The dismissal date will be effective from the date in the dismissal letter, unless the appeal is upheld. The employee's employment will not continue whilst a decision regarding their appeal is reached. If the appeal is upheld, the employee will be reinstated with no break in their continuous service and their pay will be backdated to the date of dismissal.

7. Right to be accompanied

- 7.1. You have the right to be accompanied by a fellow worker or trade union representative at any formal hearing or subsequent appeal.
- 7.2. The automatic right to be accompanied does not apply at any informal stage of this procedure but if requested then it will be allowed, provided that it does not cause any delay to the process.
- 7.3. The council reserves the right to refuse accompaniment by a person who is deemed to be unsuitable by the HR team. Examples of unsuitability would include someone who has a vested interest in the outcome of the process and anyone who has previously behaved inappropriately during a hearing.
- 7.4. If your trade union representative or workplace colleague is not available at the time arranged for the hearing, you may request an alternative hearing date provided that it is within a reasonable timeframe, which will be determined by the chair of the panel. A postponement will normally also be granted where, to do otherwise would seriously prejudice the ability of either party to present their case. A hearing will normally only be rearranged once and the chair of the hearing may determine an outcome on the evidence available without the employee being present if they are unable to attend a hearing that has already been rearranged.

8. Equality Statement

The Council is committed to promoting equality, valuing diversity and combating unfair treatment. The Council will endeavour to ensure equal access to its policies and procedures and will combat discrimination or less favourable treatment on the grounds of any irrelevant

consideration, in accordance with the Equality Act 2010.