

## 3. Conduct and Discipline

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Procedure		Page
1. Aim		1
2. Key Points		1
3. Outline		3
4. Preliminary Investigation		4
5. Suspension		6
6. Notification		7
7. Hearing		8
8. Appeal		9
9. Disciplinary Sanctions		10
10. Implementing Transfers as Disciplinary Sanctions		13
11. Implementing Demotion as Disciplinary Sanctions		14

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# Conduct and Discipline Procedure/Policy



## 1.0 Aim of the procedure

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### 1.1 **Our aim is to:**

- 1 enable managers to remedy promptly and effectively serious problems of misconduct (including gross misconduct)<sup>1</sup>
- 2 keep staff informed of the action they face if they fail to meet the Council's standards of conduct
- 3 deal with disciplinary matters fairly and within the principles of natural justice

## 2.0 Key points

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### 2.1 **Managers will:**

- 1 deal with matters arising in supervision meetings as part of performance management using counseling and mediation methods with staff informally on matters which do not warrant action under the formal procedures. Contact HR for support and advice before considering formal action.
- 2 make the distinction between misconduct and capability<sup>2</sup> and initiate the proceedings as necessary
- 3 decide (and keep under review) whether the case warrants a period of suspension or redeployment to facilitate the investigation
- 4 write to staff confirming that they are under investigation outlining allegations brought against them as soon as the process begins
- 5 meet with the employee within 10 working days, set a timetable, and keep the employee informed of any changes to the timetable
- 6 investigate thoroughly any allegations of misconduct that come to their attention and decide if formal action is needed<sup>3</sup>
- 7 investigate matters promptly, decide if formal action is necessary and, if formal action is needed refer the matter to another manager with authority to hear the case. See [Delegated Authorities](#)

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- 1 The primary aim of the procedure is to correct misconduct rather than to punish staff.
  - 2 Capability is a failure to perform duties satisfactorily to the required standards, See [Capability Procedure](#)
  - 3 Normally the line manager will investigate the allegation although the Corporate Audit and Anti-Fraud Team (CAAF) may lead investigations in cases that involve allegations of financial impropriety or fraud as the gathering of evidence may require particular skills and expertise.

# Conduct and Discipline Procedure/Policy



## 2.2 *Our managers will:*

- 1 ensure that employees
  - 1 are told the purpose of any interviews, hearings or meetings they are called to
  - 2 are given reasonable notice of such meetings
  - 3 are given the opportunity to be accompanied (or represented in their absence) by another person (but not a legal representative)
  - 4 are told of any allegations against them
  - 5 are given an opportunity to give an explanation and to put their side of the matter
- 2 ensure the case is heard by an officer of the Council with the authority to act as a chair and make the decision, advised by an HR Officer. (The chair has discretion to increase the size of the panel, for advice on technical issues where necessary.)
- 3 notify relevant professional bodies of outcomes following our formal hearings as necessary.
- 4 in cases where they are considering disciplining a union representative
  - a consult the Head of Human Resources and
  - b at the earliest practical time, discuss the case with a senior or full-time official from the union<sup>1</sup>

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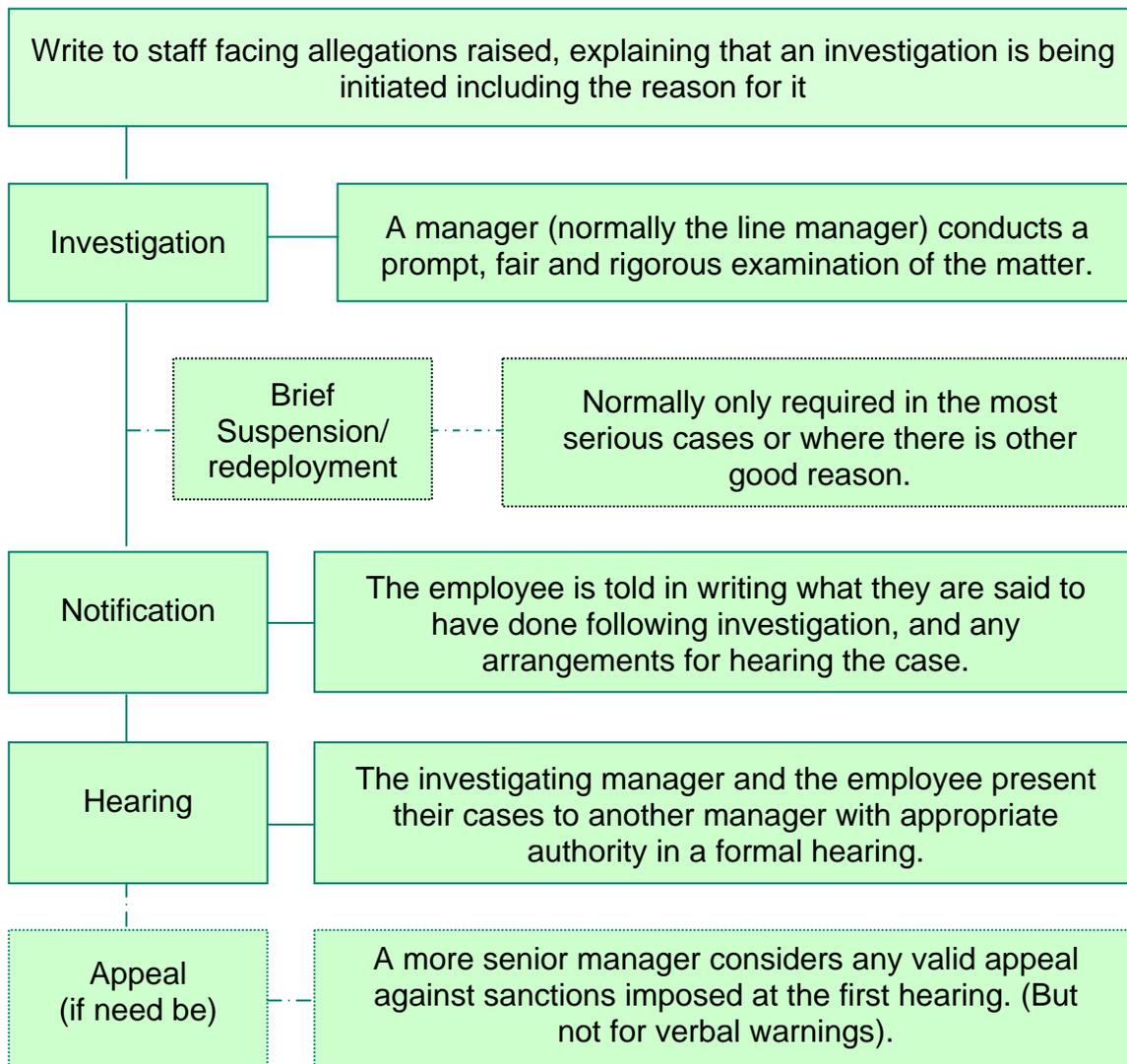
1 The earlier this can be done the better. The ACAS code says: "if the employee concerned is a trade union representative discuss the case with a trade union full-time official after obtaining the employee's agreement. This is because the action may be seen as an attack on the union.

# Conduct and Discipline Procedure/Policy



## 3.0 Outline of procedure

Formal discipline in the Council can be seen as a five stage process (Six if it is necessary to suspend or redeploy the employee before the hearing). Each stage sets out the employee's right to be represented.



# Conduct and Discipline Procedure/Policy



## 4.0 Preliminary Investigation

<b>4.1 The manager<sup>1</sup> will:</b>	<b>4.2 The employee is entitled to:</b>
<ol style="list-style-type: none"> <li>1 arrange to meet the employee within 10 working days</li> <li>2 treat staff with respect during the process on the basis of natural justice</li> <li>3 liaise with HR before contacting the police in relation to circumstances that may constitute a criminal offence</li> <li>4 contact Corporate Audit and Anti-Fraud Team (CAAF) in cases involving financial allegations and/ or whistle blowing<sup>2</sup></li> <li>5 decide (and keep under review) every four weeks whether the case warrants a brief period of suspension or other action to facilitate the investigation</li> <li>6 plan the investigation to ensure the matter is dealt with promptly, inform the employee of the likely timescales and keep them informed on progress.</li> <li>7 investigate, collect evidence, and take any witness statements, promptly, before memories fade; keeping all evidence securely</li> <li>8 consider and address the needs of the team whilst maintaining confidentiality of staff undergoing the procedure without disclosing personal information</li> <li>9 take stock and decide if;               <ol style="list-style-type: none"> <li>1 there is a case to answer</li> <li>2 they can deal with the matter informally</li> <li>3 they can deal with the matter without a formal hearing<sup>3</sup></li> </ol> </li> <li>10 if need be, prepare a written statement of the case for later submission to the hearing</li> <li>11 advise the employee in writing if there is no case to answer</li> <li>12 deal with records of disciplinary matters as set out in the Council's standard on personnel records.</li> <li>13 send a copy of the preliminary investigation minutes to the employee concerned normally within 5 working days</li> </ol>	<ol style="list-style-type: none"> <li>1 be told the purpose of any questioning, interviews, hearings or meetings</li> <li>2 the opportunity to be accompanied (or represented in their absence) by another person (but not a legal representative)</li> <li>3 be told of any allegations against them</li> <li>4 give any explanation and to put their side of the matter</li> <li>5 be told in writing if they are to be suspended from work and the reason for this</li> <li>6 be told in writing if there is no case to answer.</li> <li>7 receive minutes of all the preliminary investigation meetings they have attended</li> </ol>

<sup>1</sup>Normally the employee's line manager. There may be times when a more senior manager, audit or other specialist staff may assist or lead an investigation.

# Conduct and Discipline Procedure/Policy



- 2 In these cases an investigation will normally be carried out by Audit, and the case will be referred to management following the Audit investigation if there is a recommendation for disciplinary action.
- 3 This would be possible if the employee admits an offence and agrees to the disciplinary sanction that is proposed. This is not appropriate in cases that constitute gross misconduct.

# Conduct and Discipline Procedure/Policy



## 5.0 Suspension

<b>5.1 If appropriate<sup>1</sup>, the manager<sup>2</sup> will:</b>	<b>5.2 The employee is entitled to:</b>
<ol style="list-style-type: none"> <li>1 invite the employee to a meeting to discuss serious matters which have come to light regarding their conduct</li> <li>2 at the meeting, outline briefly the nature of the allegation</li> <li>3 offer the employee a short adjournment to consider their response and hear any brief response the employee may wish to make</li> <li>4 decide whether               <ol style="list-style-type: none"> <li>1 there is a case that on the face of it warrants closer investigation</li> <li>2 the case warrants a brief period of suspension<sup>3</sup> or other action short of suspension e.g. redeployment</li> </ol> </li> <li>5 explain to the employee any action to suspend or transfer and tell them that they must be available to co-operate with the investigation</li> <li>6 say how long the investigation is likely to last</li> <li>7 notify any suspension to directorate HR</li> <li>8 review the suspension at 20 working day intervals if the matter is not resolved.</li> </ol>	<ol style="list-style-type: none"> <li>1 be told the reason why they are being suspended</li> <li>2 be told of any conditions that apply to the suspension</li> <li>3 give an initial response to any allegations</li> <li>4 the opportunity to be accompanied by another person (but not a legal representative)</li> <li>5 have the suspension confirmed in writing within three days</li> <li>6 be paid in full as if they were not suspended, provided that they remain available to assist with or respond to the disciplinary process. (If they are sick the normal sick leave and pay entitlements would apply as stated in the individual's contract of employment).</li> </ol>

1. This stage is normally only appropriate in serious cases, for example, involving gross misconduct or where relationships have broken down or where it is considered there are risks to Council property or there are responsibilities to other parties.
2. Normally a manager with authority to suspend, See [Delegated Authorities](#) However, if such a manager is not available, the employee may simply be sent home until the relevant people can meet.
3. Or another option which removes the employee from the workplace which may be necessary to investigate misconduct thoroughly.

# Conduct and Discipline Procedure/Policy



## 6.0 Notification

<b>6.1 The investigating officer will:</b>	<b>6.2 The employee is entitled to:</b>
<ol style="list-style-type: none"> <li>1 notify the employee in writing of<sup>1</sup>:               <ol style="list-style-type: none"> <li>1 the date of the hearing<sup>2</sup></li> <li>2 what the allegations are</li> <li>3 who will present the case and who will hear it</li> <li>4 the names of any management witnesses</li> <li>5 arrangements for exchanging documents, witness statements and the investigating manager's case statement</li> <li>6 if their job is at risk<sup>3</sup> and the reason why this is so</li> </ol> </li> <li>2 give the employee a copy of the employee's guide to the disciplinary procedure - <a href="#">Disciplinary guide</a> and copies of the documents that will be referred to at the meeting, together with a list of those documents</li> </ol>	<ol style="list-style-type: none"> <li>1 reasonable notice (normally 5 working days) in writing of the date of the hearing</li> <li>2 the opportunity to be represented by a trade union or another person e.g. workplace colleague (but not a legal representative)</li> <li>3 postpone the meeting<sup>4</sup> to another reasonable time within 5 working days after the original date - if their representative will not be available at the time proposed.</li> <li>4 submit evidence, documents and the names of witnesses relevant to their case<sup>1</sup>.</li> </ol>

1. Normally, management will arrange for the employees to receive the documents and information at least 5 working days before the hearing. The employee will arrange for management to receive the documents and information they themselves wish to submit at least 1 working day before the hearing.
2. The date should be chosen after consulting with the parties, including the employee's representative, to avoid unnecessary postponements.
3. The job is normally only at risk where either:
  - the employee has had a final written warning
  - the allegation is one of gross misconduct
4. With good communication there should be no need for any delay.

# Conduct and Discipline Procedure/Policy



## 7.0 Hearing

<b>7.1 The manager hearing the case will:</b>	<b>7.2 The employee is entitled to:</b>
<ol style="list-style-type: none"> <li>1 conduct the meeting as a fact finding process, ensuring good order and natural justice</li> <li>2 decide any disputes about procedure</li> <li>3 consider and evaluate the evidence presented by the parties at the hearing</li> <li>4 judge the facts of the case on the balance of probabilities</li> <li>5 consider how serious the offence is</li> <li>6 take into account any advice given by any HR or technical advisor</li> <li>7 consider what action (if any) to take to improve conduct</li> <li>8 apply any appropriate disciplinary sanction and explain any conditions that apply to it</li> <li>9 ensure that adequate notes are taken and records kept</li> <li>10 confirm the decision in writing and set out any right of appeal.</li> </ol>	<ol style="list-style-type: none"> <li>1 the opportunity to be represented by a trade union or another person (but not a legal representative)</li> <li>2 hear the case against them</li> <li>3 put their side of events</li> <li>4 bring witnesses to give evidence relevant to the case</li> <li>5 question the evidence of witnesses and question any management witnesses</li> <li>6 a letter confirming the decision, the key issues considered in reaching the decision and any rights of appeal</li> <li>7 appeal<sup>1</sup> against any sanction (other than an oral warning). The appeal must:               <ol style="list-style-type: none"> <li>1 set out in full the grounds of the appeal</li> <li>2 be on the right form</li> <li>3 be lodged with the service head within 10 working days of the date of decision.</li> </ol> </li> </ol>

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1. Service Heads, or Executive Directors will hear appeals against dismissal or demotion. The Service Head or someone they appoint will hear appeals against any other decision.

# Conduct and Discipline Procedure/Policy



## 8.0 Appeal

<b>8.1 The panel<sup>1</sup> hearing the appeal will:</b>	<b>8.2 The employee is entitled to:</b>
<ol style="list-style-type: none"> <li>1 conduct the meeting as a fact finding process ensuring good order and natural justice</li> <li>2 decide any disputes about procedure</li> <li>3 consider the grounds of appeal<sup>2</sup> and reconsider the decision</li> <li>4 if need be, change the decision on the facts of the case or reduce the severity of the management action (or both)</li> <li>5 confirm the decision in writing.</li> </ol>	<ol style="list-style-type: none"> <li>1 reasonable notice (normally 5 working days) in writing of the date of the hearing</li> <li>2 reasonable opportunity to be represented by another person (but not a legal representative)</li> <li>3 postpone the meeting<sup>3</sup> to another reasonable time within 5 working days after the original date - if their representative will not be available at the time proposed</li> <li>4 put the grounds of appeal and bring evidence relevant to them</li> <li>5 submit documentation in support of their appeal at least 1 working day in advance of the hearing</li> <li>6 hear and question any rebuttal by management.</li> </ol>

1. Service heads (from another Directorate) will hear appeals against dismissal or demotion. The service head or someone they appoint will hear appeals against any other decision. They will be supported by at least one other person, often an HR Adviser.
2. The hearing will examine the grounds of appeal (It will not usually rehear the entire case nor re-examine witnesses). The Appeal will be on one of the following grounds
  - **procedure** - a failure to follow procedure had a material effect on the decision
  - **the facts of the case** – the appellant can bring evidence directly relevant to disputed facts as set out in the grounds of appeal. Otherwise the facts at the earlier stage will be accepted.
  - **sanction/warning/action** – too severe given the circumstances of the case
  - **new evidence** – only new evidence which had not come to light for the first hearing is to be considered. The appeal is not to be used to re-argue the case with different evidence. Where there is genuine new evidence the original hearing officer should have the opportunity to hear the evidence and review their decision.
3. Decisions to postpone are made by the chair of the hearing panel having considered the reasons put forward. The chair will set the new date in consultation with all parties concerned.

# Conduct and Discipline Procedure/Policy



## 9.0 Disciplinary sanctions

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### 9.1 The following formal sanctions are available

<b>Warnings</b>	<b>Normal Duration<sup>1</sup></b>
1 oral warning	<b>1 year</b>
2 written warning	<b>18 months</b>
3 final warning	<b>2 years</b>

### 9.2 Other sanctions:

- 1 transfer<sup>2</sup> to another suitable job - where the offence means that the employee cannot continue in their original work-place or job
- 2 demotion<sup>2</sup> - as an alternative to dismissal
- 3 dismissal.

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1. In exceptional cases (for example, inappropriate behaviour towards vulnerable people, or gross negligence of the duty of care for clients), the misconduct may be so serious that the Council would be justified in never regarding as spent. ACAS advises that in such cases the employer should make clear
    - that the warning can never be removed
    - the possible consequences of a recurrence.
  2. How to implement transfers and demotions is set out in sections 10 and 11

# Conduct and Discipline

## Procedure/Policy



### 9.3 Misconduct includes:

Offences considered as unacceptable conduct fall into two main categories: breaches of trust and breaches of discipline. These can be either of a minor or more serious nature falling short of gross misconduct. Acts likely to constitute misconduct include:

- breach of Council policy, procedure or professional requirements e.g. frequent lateness, unauthorised absence or repeated failure to follow absence-reporting rules.
- misuse of the Council's property and premises or negligence at work leading to injury or loss of or damage to Council or public property
- refusal to obey a reasonable and lawful management instruction
- failure to comply with the requirements of notifying absence due to sickness
- inappropriate language or behaviour

### 9.4 Gross misconduct includes:

Acts that constitute gross misconduct may be sanctioned with dismissal, normally without notice, include the following:

- theft, fraud or deliberate falsification of records e.g. time sheets, car expenses overtime, sickness claims and external financial benefits
- serious acts of non-compliance of the Council's rules and regulations e.g. financial, health and safety or contractual
- fighting or assault on another person including abuse of the Council's staff or clients
- serious incapability through alcohol or non-prescribed drug use (See the Council's Alcohol Policy)
- serious negligence causing unacceptable loss, damage or injury
- deliberate damage to Council property
- serious misconduct found through vetting, CRB or other checks as required.

2. In determining the seriousness of misconduct due regard will be given to the circumstances of each individual case. Whether or not an act constitutes gross misconduct may depend upon: the type and degree of misconduct, the consequence arising from the action, and the frequency or location in which it is committed
3. The above list provides examples and is therefore not exact or exhaustive. It does however indicate the seriousness that an incident must reach if it is likely to justify gross misconduct.

# Conduct and Discipline Procedure/Policy



## **9.5 Monitoring following Sanctions:**

In order to ensure that teams may function effectively following the application of sanctions management will monitor the outcomes and offer support through training and guidance as appropriate to improve conduct amongst the Council's staff.

# Conduct and Discipline

## Procedure/Policy



### 10.0 Implementing Transfers as a Disciplinary Sanction

<b>10.1 The hearing panel will:</b>	<b>10.2 The employee is entitled to:</b>
<ol style="list-style-type: none"> <li>1 normally transfer an employee only where there is a clear reason to do so arising from the matters heard at the disciplinary hearing<sup>1</sup></li> <li>2 transfer staff to a known genuine vacancy, normally in the same service<sup>2</sup></li> <li>3 ensure that the transfer can be achieved in a reasonable time-scale and that the matter is not allowed to drift</li> <li>4 ensure that the job the employee is transferred to               <ol style="list-style-type: none"> <li>1 has a reasonably similar person specification or</li> <li>2 is a job they have the skills for. In addition the Panel should consider whether the employee should for example:                   <ul style="list-style-type: none"> <li>- be more closely supervised, or</li> <li>- not be required to handle cash, supervise staff, have personal contact with particular individuals, care for particular clients, etc.</li> </ul> </li> </ol> </li> <li>5 consult with the manager of the job identified for the transfer, before formalising the decision.</li> </ol>	<ol style="list-style-type: none"> <li>1 a suitable alternative to the current job in terms of hours, pay and status<sup>2</sup></li> <li>2 be told the reason for the transfer and how long it will be before they can be considered for a vacancy in the area they were transferred from<sup>1</sup></li> <li>3 appropriate induction and training in the new job.</li> </ol>

1. Transfer is not an opportunity to export problems to other managers outside the service. The employee should not normally be transferred to temporary work. The redeployment policy (see Managing Change) does not apply to the transfer.
2. Where the job is not suitable the transfer would require the agreement of the employee – unless the transfer is an alternative to dismissal. Where the transfer is an alternative to dismissal, the employee may choose not to accept the transfer, but if the employee so chooses, the alternative sanction of dismissal will have to be applied.

# Conduct and Discipline Procedure/Policy



## 11.0 Implementing Demotion as a Disciplinary Sanction

<b>11.1 The hearing panel will:</b>	<b>11.2 The employee is entitled to:</b>
<ol style="list-style-type: none"> <li>1 use demotion only where the offence would normally warrant dismissal but there is substantial mitigation, for example,               <ol style="list-style-type: none"> <li>1 the employee has an excellent work record and the offence is out of character, or</li> <li>2 some other substantial mitigating circumstance or reason</li> </ol> </li> <li>2 demote the employee into a known genuine vacancy, normally in the same service<sup>1</sup> as identified by the hearing panel</li> <li>3 ensure that the job the employee is demoted to is a job they have the skills for. In addition the Panel should consider whether the employee should for example:               <ul style="list-style-type: none"> <li>-be more closely supervised, or</li> <li>-not be required to handle cash, supervise staff, have personal contact with particular individuals, care for particular clients, etc.</li> </ul> </li> <li>4 ensure that the demotion can be achieved in a reasonable time-scale and that the matter is not allowed to drift<sup>2</sup></li> <li>5 the employee has the range of skills required to do the job they are demoted to.</li> </ol>	<ol style="list-style-type: none"> <li>1 the rate of pay for the lower grade job. Pay would not be protected.</li> <li>2 be told the reason for the demotion and how long it will be before they can apply for or be considered for promotion<sup>3</sup></li> <li>3 appropriate induction and training in the new job.</li> </ol>

1. Demotion is not an opportunity to export problems to other managers outside the service. The employee should not normally be demoted to temporary jobs. The redeployment policy (see Managing Change) does not apply to the demotion.
2. Normally within 3 months. Where the demotion is an alternative to dismissal, the employee may choose not to accept the demotion, but if the employee so chooses, the alternative sanction of dismissal will have to be applied.
3. As demotion is an alternative to dismissal, it would normally be accompanied by a final warning. When the final warning lapses, the employee will normally be able to apply for promotion within the Council in the normal way.