



## Disciplinary policy and procedure

### 1. Purpose and scope

This procedure is designed to help and encourage all council employees to achieve and maintain high standards of conduct whilst at work or representing the council. The aim is to ensure consistent and fair treatment for all. This procedure is prepared in accordance with the procedures as set out in the Employment Act 2008 and the ACAS Code of Practice 2009.

This policy will be applied fairly, consistently and in accordance with the Equality Act 2010.

### 2. Principles

- No formal disciplinary action will be taken against an employee until the case has been investigated fully.
- At every stage in the procedure the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made.
- At all formal stages the employee will have the right to be accompanied (see 7).
- No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty of dismissal without notice or payment in lieu of notice may be applied.
- An employee will have the right of appeal against any disciplinary penalty imposed.

The council recognises that misconduct and unsatisfactory work performance are different issues. This disciplinary policy will only be used when performance management proves ineffective.

### 3.1. The procedure for misconduct and gross misconduct

3.1.1. Misconduct is employee behaviour that can lead to the employer taking disciplinary action. The following list provides examples of misconduct which will normally give rise to formal disciplinary action:

- Unauthorised absence from work
- Poor time keeping
- Breach of Health and Safety rules or procedures
- Misuse of the council's resources and facilities
- Refusal to carry out reasonable requests or instructions
- Disruptive behaviour
- Failure to perform the job to the standard expected or in line with the job description / objectives.

3.1.2. Gross misconduct is misconduct that is so serious that it is likely to lead to dismissal without notice. The following list provides examples of **gross misconduct**:

- Theft, fraud, deliberate falsification of records, or other acts of dishonesty

- Violet behaviour
- Serious and deliberate damage to property
- Gross negligence
- Incapacity at work due to illegal drugs or excessive alcohol
- Bullying, discrimination or harassment
- Gross insubordination
- Use of internet to access pornographic, obscene or offensive material
- Accepting bribes or incentive payments
- Gross incompetence in the conduct of work.

### **3.2. Informal action**

Minor misconduct will be dealt with informally, usually in a confidential one-to-one meeting between the employee and line manager. Where the matter is more serious, or informal action has not brought about the necessary improvement, formal action will be taken. If the disciplinary action is against the Chief Officer, the matter should be handled discreetly by three members of the HR Committee.

### **3.3. Formal action**

3.3.1. Before any formal action is taken, a full investigation will be undertaken by the Chief Officer. If the matter refers to the Chief Officer, the investigation will be carried out by three members of HR Committee.

The level of warning an employee may receive for misconduct/gross misconduct will depend on the seriousness of the alleged actions and on previous conduct in all the circumstances. In the event of alleged gross misconduct the formal process may commence at Stage 4 (see 4).

#### **3.3.2. Disciplinary letters**

If there is a concern about an employee's conduct or behaviour and formal action is to be taken, a letter will be given to the employee advising him/her of the allegation(s) and reasons why this is unacceptable. The letter should invite the employee to attend a meeting at which the alleged misconduct will be discussed, and will inform the employee of their right to be accompanied to the meeting (see 7). The letter will specify at which stage the disciplinary procedure is being invoked (see 4), and if invoked at Stage 4 for Gross Misconduct, the letter will warn that a potential outcome could be dismissal. Copies of any documents to be produced at the meeting will be provided.

#### **3.3.3. Disciplinary meetings**

Disciplinary meetings will be conducted by a manager who was not involved in the investigation. If this is not possible, the meeting will be conducted by three councillors who have not previously been involved in the case.

The time and location of a disciplinary meeting should be agreed with the employee. The meeting should be held in a private location with no interruptions. This will normally be without undue delay but allowing the employee to prepare their case e.g. within five working days of the disciplinary letter being sent, where practically possible. At the meeting the manager will state the complaint against the employee and go through the evidence which has been gathered. The employee will be allowed to ask questions, present evidence and call witnesses if advance notice has been given that they will do so.

The employee will be advised of the outcome of the disciplinary meeting within five working days.

Where an employee is unable or unwilling to attend a disciplinary meeting without good cause, the manager should make a decision on the evidence available. There will be a maximum of three attempts to hold a disciplinary meeting.

#### **4. Outcomes and penalties**

##### **Stage 1 – Oral Warning**

An oral warning will be issued for most first instances of minor misconduct. The employee will be advised:

- Of the reason for the oral warning, the improvement required (if appropriate) and the time period for improvement.
- That this is the first stage of disciplinary procedure.
- Of the right to appeal.
- That a note confirming the oral warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for 6 months.

##### **Stage 2 – Written Warning**

If there is a repetition of earlier misconduct which result in an oral warning, or for different and more serious misconduct, the employee will normally be given a written warning. A written warning will set out:

- The reason for the written warning, the improvement required (if appropriate) and the time period for improvement.
- That further misconduct/failure to improve may result in more serious disciplinary action.
- The right to appeal.
- That a note confirming the written warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for 12 months.

##### **Stage 3 – Final Written Warning**

If there is a further misconduct during the period of a written warning, or if the misconduct is sufficiently serious, the employee will be given a final written warning.

A final written warning will set out:

- The reason for the final written warning, the improvement required (if appropriate) and the time period for improvement.
- That further misconduct/failure to improve may result in more serious disciplinary action up to and including dismissal.
- The right to appeal.
- That a note confirming the final written warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for 18 months.

##### **Stage 4 – Dismissal**

An employee may be dismissed:

- For gross misconduct.
- If there is no improvement within the specified time period in the conduct which has been the subject of a final written warning.

Only the Chief Officer or a panel of three councillors can take the decision to dismiss an employee.

If an employee is dismissed, a written statement will be issued setting out:

- The reason(s) for dismissal.
- The date on which employment will terminate.
- The right to appeal.

## **5. Suspension**

If the employee is accused of an act of gross misconduct, they may be suspended from work on full pay while the alleged offence is investigated. Only the Chief Officer or a panel of three councillors can take the decision to suspend an employee. Whilst suspended pending disciplinary investigation, regular contact with a nominated person at the council will be maintained, although access to premises, equipment or systems may be denied.

## **6. Appeal**

An employee who is subject to disciplinary action has the right of appeal. A notice of appeal must be forwarded in writing to the Chief Officer within five working days of receipt of the disciplinary decision, giving reasons for the appeal.

The grounds for appeal include:

- The council's failure to follow the disciplinary policy.
- The disciplinary action is considered too severe.
- New evidence has come to light.

The Appeal will be heard by a Panel of three councillors who have not previously been involved in the case, and will view the evidence with impartiality. The employee will be notified, in writing, within 10 working days of receipt of notice of appeal, of the time, date and place of the appeal meeting. The employee will be advised of the right to be accompanied (see 7).

Any new evidence to be presented must be forwarded to the Panel at least three clear working days before the appeal. Should new evidence arise during the appeal, the employee (or companion) will be given the opportunity to comment before action is taken, if necessary, the appeal will be adjourned.

The Appeal Panel will appoint a Chair from one of its members.

At the Appeal, the Chair will:

- Introduce the panel members to the employee.
- Explain the purpose of the meeting, which is to hear the employee's reasons for appeal.
- Explain the action that the Appeal Panel may take.

The employee (or his/her companion) will be asked to explain the grounds for his/her appeal.

The Chair will inform the employee that he/she will receive the decision and the Panel's reasons, in writing, within five working days.

The Appeal Panel may decide to uphold the disciplinary penalty imposed, substitute a less serious sanction or decide that no disciplinary action is necessary. In the case of no disciplinary action, no record of the matter will be retained in the employee's file. The Appeal Panel cannot increase any disciplinary penalty imposed.

If an appeal against dismissal is upheld, the employee will be paid in full for the period from the date of dismissal and continuity of service will be preserved.

The decision of the Appeal Panel will be final.

## **7. The right to be accompanied**

At each formal stage of disciplinary interview, an employee has the right to be accompanied by a work colleague, a trade union representative or an appropriately accredited official employed by a trade union.

The companion can:

- Address the hearing.
- Put and sum up the employee's case.
- Respond on behalf of the employee to any views expressed at the meeting.
- Confer with the employee.

The companion cannot:

- Answer questions on behalf of the employee.
- Address the meeting if this is against the wish of the employee.
- Prevent the employee from explaining their case.

## **8. Grievance raised during a disciplinary procedure**

If an employee chooses to exercise his/her right to raise an internal grievance after the disciplinary process has commenced, the disciplinary matter will be put on hold until the grievance has been considered.

## **9. Criminal charges or convictions**

If an employee is charged with or convicted of a criminal offence this does not automatically give rise to a disciplinary situation. Consideration needs to be given to how a charge or conviction may affect an employee's ability to undertake his or her job duties and their relationships with the employer, colleagues and customers.

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