



DISCIPLINARY PROCEDURE

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This Policy will be reviewed annually by the Personnel Committee.

Adopted: Personnel Committee meeting 8th October 2024 Minute ref S24/05 (a)

Reviewed:

INTRODUCTION

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. Wherever possible, the Council will try to resolve its concerns about employees' behaviour informally, without starting the formal procedure set out below.

This procedure is based on and complies with the 2015 ACAS Code of Practice. It will be applied fairly, consistently and in accordance with the Equality Act 2010 and other relevant law affecting councils.

PRINCIPLES

The Council will fully investigate the facts of each case.

This disciplinary policy applies when there has been any misconduct, or when performance management to improve any unsatisfactory work performance issues has proved ineffective.

Employees will be informed in writing about the nature of the complaint against them and given the opportunity to state their case. They will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary hearing.

Employees may be accompanied to or represented by a companion (colleague or trade union representative) at any investigatory, disciplinary or appeal meeting. The companion can confer with the employee but cannot answer questions put to the employee or prevent them from explaining their case.

The Council will give employees reasonable notice of any meetings, at least 7 days unless specific circumstances require otherwise, and the employee must make all reasonable efforts to attend. Failure to attend may result in the meeting still going ahead and a decision being taken. An employee not attending the meeting can be represented and/or make written submissions.

If the employee's companion is unavailable, the employee can request a postponement and propose an alternative date within 7 days of the original meeting.

Information about the disciplinary matter will be restricted to those involved in the disciplinary process. A record of the reason for disciplinary action and the action taken by the Council is confidential to the employee. All records will be held by the Council in accordance with GDPR.

Audio or video recordings of meetings are prohibited, unless agreed by all parties.

If an employee subject to a disciplinary procedure raises a grievance, the grievance will normally be heard after the completion of the disciplinary procedure.

The Council may consider mediation at any stage of the disciplinary procedure.

Where the relevant employee is the Clerk themselves, their line manager is considered to be the Chairman of the Personnel Committee, or where the Chairman feels appropriate, the Personnel Committee as a whole

EXAMPLES OF MISCONDUCT

Misconduct is employee behaviour that can lead to the employer taking disciplinary action, although the employee will not be dismissed on the first occasion there has been misconduct.

The following list contains some examples of misconduct. It is not exhaustive.

- Unauthorised absence
- Poor timekeeping
- Misuse of the Council's resources and facilities, such as telephone, email and internet
- Inappropriate behaviour
- Refusal to follow reasonable instructions
- Breach of health and safety rules
- Bringing the Council into disrepute

EXAMPLES OF GROSS MISCONDUCT

Gross misconduct is misconduct so serious that it is likely to lead to dismissal without notice. The following list contains examples of gross misconduct. It is not exhaustive.

- Bullying, discrimination and harassment
- Incapacity at work because of alcohol or drugs
- Violent behaviour
- Fraud or theft
- Gross negligence
- Gross insubordination
- Serious breaches of Council policies and procedures such as Health & Safety or Equality
- Serious and deliberate damage to property
- Use of the internet or email to access pornographic, obscene or offensive material
- Disclosure of confidential information
- Bringing the Council into disrepute

SUSPENSION

If allegations of gross misconduct are made, the Council may suspend the employee while further investigations are carried out. Suspension will be on full pay. Suspension does not imply determination of guilt or innocence; it is merely to enable further investigation.

While on suspension, the employee is required to be available during normal hours of work in the event that the Council needs to make contact. The employee must not contact or attempt

to contact or influence anyone connected with the investigation in any way or discuss the matter with any employee or councillor.

The employee must not attend work. The Council will make arrangements for the employee to access any information or documents required to respond to any allegations.

PROCEDURE

The Council may make preliminary enquiries to establish the basic facts of what has happened in order to understand whether there may be a case to answer under the disciplinary procedure.

If the employee's line manager believes there may be a disciplinary case to answer, the Council may initiate a more detailed investigation to establish the facts or obtain the perspective of others who may have witnessed misconduct.

Where minor concerns about misconduct become apparent, it is the line manager's responsibility to raise this with the employee and clarify the improvements required. A file note will be made and kept on the employee's personnel file. These informal discussions are not part of a formal disciplinary procedure. If the conduct fails to improve, or if further matters of misconduct become apparent, the line manager may decide to formalise the discussions and invite the employee to a first stage disciplinary hearing.

DISCIPLINARY INVESTIGATION

If a formal disciplinary investigation is required, the Council's Personnel Committee will appoint an Investigator who will be responsible for undertaking a fact-finding exercise to collect all relevant information. The Investigator will be independent and will normally be a councillor. If the Personnel Committee decides that there are no councillors who are independent (for example, because they all have direct involvement in the allegations), it will appoint someone from outside the Council. The Investigator will be appointed as soon as possible after allegations are made. The Personnel Committee will inform the Investigator of the terms of reference of the investigation, which will specify:

- The allegations of events that the investigation is required to examine
- Whether a recommendation is required
- How the findings should be presented (such as a written report)
- Who the findings should be reported to and who to contact for further direction

The Investigator should submit their findings within 35 calendar days of appointment.

The Personnel Committee will notify the employee in writing of the alleged misconduct and details of the person undertaking the investigation. The employee may be asked to meet the Investigator as part of the investigation and to be given the opportunity to comment on the allegations. The employee will be given sufficient notice so that they have reasonable time to prepare for it. The letter will also explain the investigatory process and will include a copy of

the Council's disciplinary procedure. The Investigator will try to obtain any relevant information from other persons in advance of the meeting with the employee.

The Investigator has no authority to take disciplinary action. Their role is to establish the facts of the case as quickly as possible and prepare a report that recommends to the Personnel Committee whether or not disciplinary action should be considered as per this policy.

The Investigator's report will contain their recommendations and the findings on which they were based, either:

- The employee has no case to answer and there should be no further action
- The matter is not serious enough to justify further use of the disciplinary procedure and can be dealt with informally, or
- The employee has a case to answer, and a formal hearing should be convened under the Council's disciplinary procedure

The Investigator will submit the report to the Personnel Committee, which will decide whether further action will be taken. If the Council decides that it will not take disciplinary action, it may consider whether mediation would be appropriate in the circumstances.

DISCIPLINARY MEETING

If the Personnel Committee decides that there is a case to answer, it will appoint a sub-committee of 3 councillors to formally hear the allegations. The sub-committee will appoint a Chairman from one of its members. The Investigator shall not sit on the sub-committee, nor shall any councillor with direct involvement in the matter.

The employee will be invited, in writing, to attend a disciplinary meeting. The letter will confirm the following:

- The names of the Chairman and the sub-committee's other two members
- Details of the alleged misconduct, its possible consequences and the employee's statutory right to be accompanied at the meeting
- A copy of the information provided to the sub-committee, which may include the investigation report, supporting evidence and a copy of this disciplinary procedure
- The time and place for the meeting
- That witnesses may attend on the employee's and the Council's behalf and that both parties should inform each other of the witnesses' names at least 2 working days before the meeting

The purpose of the disciplinary meeting hearing is for the allegations to be put to the employee and then for the employee to give their perspective. It will be conducted as follows:

- The Chairman will introduce the members of the sub-committee to the employee and explain the arrangements for the hearing

- The Chairman will set out the allegations and invite the Investigator to present the findings of the investigation report
- The Chairman will invite the employee to give their account
- The employee, or their companion, will set out their case and present evidence (including any witnesses or witness statements)
- Any member of the sub-committee and the employee, or their companion, may question the Investigator or any witness or the employee
- The employee, or their companion, will have the opportunity to sum up

The Chairman will provide the employee with the sub-committee's decision with reasons, in writing, within 7 calendar days of the meeting. The Chairman will also notify the employee of their right to appeal the decision.

The disciplinary meeting may be adjourned to allow matters that were raised during the meeting be further investigated by the sub-committee.

DISCIPLINARY ACTION

If the sub-committee decides that there should be disciplinary action, it may be any of the following:

First Written Warning

If the employee's conduct has fallen beneath acceptable standards, a first written warning will be issued. This 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 will result in more serious disciplinary action
- The employee's right of 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 a specified period of time (likely 12 months)

Final Written Warning

If the offence is sufficiently serious, or if there is further misconduct or a failure to improve sufficiently during the currency of a prior warning, the employee will be given a final written warning. This 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 will result in more serious action/dismissal
- The employee's right of 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 a specified period of time (likely 12 months)

Dismissal

The Council may dismiss the employee:

- 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
- If another instance of misconduct has occurred and a final written warning has already been issued and remains in force

The Council will consider a decision to dismiss very seriously. If an employee is dismissed, they will receive a written statement of the reasons for their dismissal, the date on which the employment will end and details of their right of appeal. If the sub-committee decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file. Action taken as a result of the disciplinary meeting will remain in force unless it is modified as a result of an appeal.

THE APPEAL

An employee who is the subject of disciplinary action must give the Council written notice of their appeal within 7 calendar days of receiving written notice of the disciplinary action and must specify the grounds of appeal. This includes:

- A failure by the Council to follow its disciplinary procedure
- The sub-committee's disciplinary decision was not supported by the evidence
- The disciplinary action was too severe in the circumstances of the case
- New evidence has come to light since the disciplinary meeting

The appeal will be heard by the Council Chairman or Vice-Chairman, or where possible, a panel of 3 councillors who have not previously been involved in the case. This includes the Investigator. The appeal panel will appoint a Chairman from one of its members.

The employee will be notified, in writing, within 14 calendar days of receipt of the notice of appeal, of the time, date and place of the appeal meeting. The employee will be advised that they can be accompanied by a companion.

At the appeal meeting:

- The Chairman will introduce the panel members to the employee
- The Chairman will explain the purpose of the meeting, which is to hear the employee's reasons for appealing against the disciplinary decision
- The Chairman will explain the action that the appeal panel may take
- The employee (or companion) will be asked to explain the grounds of appeal
- The Chairman will inform the employee that they will receive the panel's decision and reasons, in writing, within 7 calendar days of the appeal hearing

The appeal panel may decide to uphold the disciplinary decision of the sub-committee, substitute a less serious sanction or decide that no disciplinary action is necessary. If it decides to take no disciplinary action, no record of the matter will be retained on the employee's file. 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 presumed.

The appeal panel's decision is final.