

## **DISCIPLINARY POLICY**

### **1. GENERAL PRINCIPLES**

1.1. The Council is committed to developing and maintaining constructive relations with its employees in order to promote an environment where colleagues are able to perform at their best and achieve and maintain high standards of conduct whilst at work or representing the council. It is recognised that concerns regarding conduct do arise from time to time and that these may come to light in different ways and/or via different formal processes, such as the Council's Grievance or Complaints procedures. This non-contractual procedure provides a framework for dealing with misconduct situations.

1.2. The Council will act fairly and consistently when dealing with cases under the Disciplinary Procedure and performance issues as well as complaints made about an employee and that employees are aware of the process for handling such matters.

1.3. This procedure does not apply during probationary periods.

1.4. The Council will seek to resolve employment issues promptly and transparently at the lowest possible level and, where appropriate, on an informal basis.

1.5. An employee has the right to be accompanied at any formal meeting and related appeal meeting under the Disciplinary Procedure by a work colleague, a duly accredited Trade Union representative or an official employed by a Trade Union and may also be accompanied on request at investigatory meetings.

1.6. If an employee has particular requirements at any stage of the procedures because of a disability or wishes to inform the Council of any relevant medical condition, the employee should contact the Town Clerk and Chair of the Executive Committee.

1.7. Different procedures apply to competency and sickness/ill health cases. The Council may commence the process using one procedure but continue the process using a different procedure if it is more appropriate and reasonable to do so.

1.8. The Council will follow each of the stages set out in these Disciplinary Procedures in any particular case but reserves the right in appropriate cases to commence the procedure at any of the specified stages or to omit a particular stage/stages. This will apply in particular to cases emerging from the Council's Grievance or Complaints procedures, for which a satisfactory level of investigation may already have taken place.

1.9. Notes of formal meetings will be taken; these will be summaries of the key points and not a verbatim record. Copies of these notes will be given to the parties present and they should inform the Council if they wish to comment on the accuracy of the notes within 5 working days of receiving them. It is normally expected that all documentation including witness statements will be shared with relevant parties [except where the Council has to withhold some information to protect a witness]. The Council will keep a written record of every disciplinary case which will be treated as confidential and kept in accordance with all relevant data protection legislation. Notes of informal meetings may also be taken where appropriate.

### **2. DISCIPLINARY PROCEDURE (CONDUCT)**

#### **2.1. INVESTIGATION**

The Council will investigate the alleged misconduct or a formal complaint made by a complainant which is recorded in writing and signed by the complainant, without unreasonable delay, carrying out any necessary investigations to establish the facts in any particular case and shall ideally be concluded within 4 weeks. The individual will be advised in appropriate detail of the allegations that are being investigated.

Where practicable the person who conducts the disciplinary meeting should be different from the person(s) who carries out the investigation. In the case of a complaint made against a member of staff, then the Line Manager would investigate and the Clerk would conduct the Disciplinary Meeting (or vice-versa). In the case of a complaint made against the Clerk, then the Council Leader would investigate and the Chair of the Executive Committee would conduct the Disciplinary Meeting (or vice-versa)

In some cases, investigations carried out under the Grievance or the Council's Complaints Procedure may result in allegations of misconduct. In such cases, the investigating manager should consider any investigation carried out so far and assess the need for further investigation, ensuring they are satisfied that the preceding investigation has been fair and reasonable in the circumstances and that the principles outlined in section 1 have been applied.

The earlier investigation (or relevant parts thereof) carried out under these policies/procedures may be utilised as part of the disciplinary process and, as a minimum, the respondent should be invited to comment. Similarly, in the case of financial irregularities there may be an investigation undertaken by internal /external parties as appropriate and where financial irregularities are identified the outcome of the investigation may be utilised as part of the disciplinary process. Cases which progress in this manner must clearly identify the alleged misconduct but must not seek to propose a conclusion or outcome ahead of further independent investigation under the disciplinary process.

The Council will confirm with the employee whether any meeting they are asked to attend is investigatory or disciplinary. In serious cases, Managers other than the employee's Line Manager or a member of the Executive Committee should carry out the investigation and the disciplinary hearing. In the case of a serious complaint made against the Clerk, then the Council Leader and the Chair of the Executive Committee would continue to take on those roles (as outlined above)

In any case, the individual involved should be updated on progress and related developments as appropriate.

## **2.2. INFORMAL DISCIPLINARY ACTION**

Informal disciplinary action may be taken in appropriate cases. This involves informally discussing the matter with the employee, defining the conduct that is unacceptable and identifying any remedial action, by way of counselling, guidance, instruction or informal cautioning.

This will usually take the form of a confidential meeting with the employee's Line Manager and/or Clerk. In the case of the Clerk being the individual against whom there is a complaint or allegation, the matter will be dealt with by the Council Leader or Executive Chair. The outcome of the meeting will be confirmed in writing, and will detail the issue(s) discussed, what needs to be done and how and when it will be reviewed.

The employee should be made aware that formal action may be taken if the informal action does not resolve matters.

## **2.3. SUSPENSION**

Suspension is not a disciplinary action nor does it infer any guilt.

Depending on the circumstances, it may be appropriate to suspend the employee from work on full pay in order that the investigation can take place. Suspension on full pay does not amount to a disciplinary sanction. Only the Town Clerk or Chair of the Executive Committee has the power 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 will be denied.

If serious or gross misconduct is alleged the employee may be suspended on full pay and benefits or temporarily deployed on alternative duties. The period of suspension will be as brief as possible in the circumstances and should be kept under review.

## **2.4. FORMAL DISCIPLINARY MEETING**

If informal action does not resolve matters or if following investigation, the alleged misconduct is considered sufficiently serious to potentially merit formal disciplinary action, the steps outlined below will be taken.

### **2.4.1. INFORM THE EMPLOYEE IN WRITING**

The Council will inform the employee in writing of the allegations. The letter will contain sufficient information about the allegations and the possible consequences to enable the employee to respond to these at the disciplinary meeting.

The letter will normally enclose copies of any documents that have been gathered during the investigation process to allow for adequate preparation by the employee.

Possible consequences up to and including dismissal, will be outlined in the letter. The letter will also advise the employee of their right to be accompanied by a work colleague or Trade Union representative.

If an employee does not understand the letter, the employee should ask their Line Manager to read through and explain the letter to them

### **2.4.2. THE MEETING**

Disciplinary meetings to hear cases will normally be convened by the line manager of the member of staff under investigation or the Clerk (as outlined in 2.1) The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case. Normally a minimum of 5 working days' notice of disciplinary meetings will be given.

At the meeting, the Council will explain the allegations against the employee and go through the evidence that has been gathered. The employee will be allowed to set out their case and answer any allegations that have been made. They will also be given the opportunity to ask questions and present evidence.

It may be appropriate for relevant witnesses to attend the disciplinary meeting and the employee will be given the opportunity to raise points at the meeting about any information provided by witnesses. Where an employee or the Council intends to call a witness, they should notify the other party of this in writing in advance of the meeting and ensure that they attend at the appropriate time. No individual can be compelled to attend a disciplinary meeting as a witness

The manager convening the disciplinary meeting will decide on the outcome, where appropriate, seeking guidance from ACAS.

The Council will keep records of any action taken under these disciplinary procedures. Wherever possible, these records will be treated as confidential, but in any case, will not be kept for any longer than allowed under the General Data Protection Regulations.

After the meeting, the Council will notify the employee of its decision in writing. This will normally be done within 10 working days of the meeting. If disciplinary action is taken the employee will be advised of the right to appeal.

## **2.5. DISCIPLINARY SANCTIONS**

The Council has discretion to determine the appropriate disciplinary sanction to apply to an employee who it concluded has committed an act of misconduct. Examples of conduct which are likely to amount to misconduct are attached as an Appendix to this procedure. These sanctions include:

### **2.5.1. FORMAL ORAL WARNING**

This will usually be appropriate for a first act of misconduct where conduct falls below an acceptable level or a minor offence has been committed and there are no live written warnings. This warning will remain live for 6 months.

### **2.5.2. WRITTEN WARNING**

This will usually be appropriate for misconduct where there is already a live formal oral warning on the employee's record or where the misconduct is considered sufficiently serious to warrant a written warning even although the employee has no live warnings. The employee will be informed of the following:

- i. the nature of the misconduct or poor performance that has led to the warning, including any prior warning(s) which have been considered
- ii. the action or improvement (if any) which is required of the employee
- iii. if appropriate, the timescale for implementing any such action
- iv. the consequences if the employee does not take the required action or fails to improve or if there is further misconduct and that the next stage of the procedure will be dismissal
- v. when the warning will cease to have effect, subject to satisfactory conduct or performance. This will normally be after 12 months, but a longer period may be stated in exceptional cases
- vi. the right of appeal.

### **2.5.4. DISMISSAL**

Dismissal will usually be appropriate in respect of the following:

**2.5.4.1.** repeated or serious misconduct during the first 12 months of an employee's employment;

**2.5.4.2.** further misconduct where there is a live written warning; or

**2.5.4.3.** any gross misconduct regardless of whether there are live warnings.

Gross misconduct will usually result in summary dismissal without notice or payment in lieu of notice. Examples of conduct which are likely to amount to gross misconduct are attached as an Appendix to this procedure.

A decision to dismiss an employee will normally be taken by the Town Clerk or in the case of the decision to dismiss the Clerk, which will normally be taken by the Chair of Executive Committee. This decision will only be taken, if following a formal disciplinary hearing, the allegations are upheld. If the decision to dismiss is upheld, then within 24 hours after the end of the disciplinary meeting, the Clerk or Chair of Executive Committee, will confirm in writing:

- i. the reason for the employee's dismissal
- ii. where applicable, the length of notice the employee is being given
- iii. the date on which the employee's employment will terminate
- iv. inform the employee of their right to appeal

### **2.5.5. ALTERNATIVE SANCTIONS SHORT OF DISMISSAL**

In appropriate cases the Council may consider some other sanction short of dismissal e.g., demotion or redeployment.

### **2.5.6. WARNING TO EMPLOYEE**

For both formal oral, first and written warning the Council will inform the employee of the nature of the misconduct, the change in behaviour required, the consequences of further misconduct and that the warning will remain live for 6 months for formal oral warnings, 12 months for written warnings.

## **3. APPEAL**

### 3.1 Lodging an Appeal

If an employee wishes to appeal the outcome of a decision made at any hearing held under the disciplinary procedure, they should submit an appeal in writing outlining their full grounds for appeal, to the Chair of the Executive Committee within 5 working days of receipt of the Council's decision. Employees will be notified within three working days that their appeal has been received.

The appeal stage is not intended to be a rehearing of the original case. Hence the grounds for appeal should typically fall within one of the following:

- Procedural error
- The outcome and recommendations are unreasonable and significantly out of line with the issues considered
- New information is now available which could not have reasonably been provided when the original outcome was communicated

Where the appeal relates to new evidence there should be a clear statement provided outlining the reason this was not available for consideration at the previous stage.

### 3.2 The Appeal Meeting

The Council will invite the employee in writing to attend an appeal hearing, normally within 10 working days of receipt of an appeal. The employee may be accompanied by a Trade Union representative or work colleague.

The Appeal will be heard by a separate panel of elected members (Appeals Panel), who have not been involved in the original disciplinary hearing, and who will be expected to view the evidence with impartiality. Appeals in relation to dismissals will be heard by a panel of three, selected from: The Mayor, Chairs of Committees, members of the Executive Committee, other Council members (in that order).

If the employee or their Trade Union representative is unable to attend the appeal meeting, steps will be taken to rearrange this as soon as possible. However, if the employee is persistently unable or unwilling to attend a meeting, the Appeal Manager may review the available materials and reach an outcome based on the information available to them. A decision to proceed in this way will be communicated in writing to the employee in advance.

The appeal meeting may take place after the disciplinary decision has taken effect. If the employee is appealing against dismissal and the employee's appeal is upheld, the employee will normally be treated as having continued in employment pending the hearing of the appeal and will be reinstated with back pay. However, if the employee's appeal is not successful, the original date of the employee's dismissal will stand.

### 3.3 The Appeal Outcome

Once the Appeals Panel has considered all the points raised, they will normally provide a response in writing, within 10 working days.

The decision of the Appeals Panel is final and there is no further right of appeal.

## **4. CRIMINAL CHARGES OR CONVICTIONS**

If an employee is charged with or convicted of a criminal offence that does not directly impact on their employment, this will 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 Council, colleagues or customers. If deemed necessary, appropriate advice will be sought, and a review as to the appropriateness for the employee to remain in the council's employment will be made by the Executive Committee.

## **5. STATUS OF THIS POLICY**

This policy does not give contractual rights to individual employees. The Council reserves the right to alter any of its terms at any time although the Council will notify the employee in writing of any changes.

## **APPENDIX 1 - MISCONDUCT**

### 1. Misconduct

1.1 The following are examples of matters that are normally regarded as misconduct:

- (a) Unauthorised absence from work;
- (b) Persistent short-term and/or frequent absences from work without a medical reason;
- (c) Lateness for work or poor timekeeping, including taking excess breaks;
- (d) Minor breaches of Health & Safety, or any other Council rules or procedures;
- (e) Failure to perform their job to the standard expected, or in line with their job description or in a timely manner;
- (f) Disruptive behaviour;
- (g) Misuse of the Council's equipment; (e.g., telephone, computers, email or the internet)
- (h) Refusal to carry out reasonable requests;
- (i) Failure to follow an agreed Council procedure or policy;
- (j) Absenteeism and leaving the workplace without permission;
- (k) Any action or behaviour which could be detrimental to the Council's reputation;
- (l) Being under the influence of drink or other intoxicants;
- (m) Mismanagement of Council finances leading to the overspend of a manager's budget;

This list is *not* exhaustive, and any offence of a similar nature could result in disciplinary action being taken.

## **APPENDIX 2 - GROSS MISCONDUCT**

### 2. Gross Misconduct

2.1 The following are examples of matters that are normally regarded as gross misconduct:

- (a) Theft or fraud. Acceptance of bribes or other secret or undeclared payments;
- (b) Physical violence (actual or threatened);
- (c) Deliberate and serious damage to property;
- (d) Unlawful discrimination, harassment, bullying or intimidation against employees, contractors, students or members of the public on the grounds of sex, sexual orientation, marital or civil partner status, pregnancy and maternity, gender reassignment, race, disability, religion or belief, or age which contravenes the Council's Equality Policy or Dignity at Work and Study Policy;
- (e) Deliberately accessing internet sites containing pornographic, offensive or obscene material;
- (f) Defamatory and /or abusive comments regarding the Council or its staff through the inappropriate use of social networking technology, electronic web logs (blogs) or other internet sites;
- (g) Intentional or malicious refusal to comply with reasonable instructions or requests made by a line manager within the workplace;
- (h) Bringing the Council into serious disrepute such as serious misuse of Council property, name or reputation;
- (i) Giving false information as to qualifications or entitlement to work (including immigration status); using fraudulent identity or withholding information that would be relevant;
- (j) Incapability to work due to being under the influence of alcohol, illegal drugs or other substances during working hours;
- (k) Causing loss, including loss of life, damage or injury through serious negligence;
- (l) Serious or repeated breach of health and safety rules or serious misuse of safety equipment;
- (m) Serious breach of confidence including unauthorised use or disclosure of confidential information or a serious failure to ensure that confidential information in the employee's possession is kept secure;
- (n) Conviction for a criminal offence that in the Council's opinion may affect the Council's reputation or its relationships with staff, students or the public, or otherwise affects the employee's suitability to continue to work for the Council;
- (o) Possession, use, supply or attempted supply of illegal drugs;
- (p) Serious neglect of duties, or deliberate breach of the Council's procedures;
- (q) Deliberate or malicious unauthorised use, processing or disclosure of personal data which contravenes the Council's Data Protection Policy;
- (r) Making a disclosure of false or misleading information under the Code on Public Interest Disclosure (Whistleblowing Policy) maliciously, for personal gain, or otherwise in bad faith;
- (s) Making untrue/vexatious allegations in bad faith against a colleague;

(t) Serious misuse of the Council's information technology systems (including misuse of developed or licensed software, use of unauthorised software and serious misuse of e-mail and the internet);

(u) Falsification of time sheets, subsistence and expenses claims etc;

(v) Serious mismanagement of council finances leading to the significant overspend of a manager's budget;

This list is *not* exhaustive and other offences of a similar gravity will result in disciplinary action being instigated at Gross Misconduct level which carries a potential penalty of dismissal. Gross Misconduct is generally any conduct which places extreme pressure on the mutual trust which exists in an employment relationship.