



## **Disciplinary Process**

### **Policy 4**

**Adoption Date: 16.09.2016**

**Review Date: As Required**

#### **1. AIMS AND OBJECTIVES**

- 1.1 This procedure is designed to assist the Council and its employees to maintain the required standards of conduct and general discipline. Disciplinary rules and procedures are in place to ensure that fairness and consistency are followed in the treatment of individuals, and that relevant employment law is adhered to. The Council will have full regard to the principles and standards set out in the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 1.2 In cases of unsatisfactory performance (or 'capability') consideration should be given as to whether the Capability Procedure should be followed. The Capability Procedure applies when the incapability is due to a genuine or inherent lack of skill or ability. In these circumstances support and training will be given to employees. The basic principles of fairness set out in the ACAS Code of Practice will still be followed.

#### **2. SCOPE**

- 2.1 This procedure applies to all employees employed by the Council. The term 'employee' includes temporary, casual and part time employees. Individuals who undertake work for the Council on a genuinely self employed basis, or those employed on a temporary basis through an employment agency, are not covered by this procedure.

#### **3. GENERAL GUIDELINES AND PRINCIPLES**

- 3.1 The Clerk is ultimately responsible for the management and discipline of all employees and will be responsible for all disciplinary matters. Where the Clerk is the subject of disciplinary action there is a separate policy which will be applicable.
- 3.2 Whenever the disciplinary process is being followed it is important that the issues are dealt with fairly. There are a number of key elements to this:
  - The issues should be raised and dealt with promptly, and meetings, decisions and confirmations of those decisions should not be unreasonably delayed.

- All parties involved should act consistently.
- An investigation should be carried out to establish the facts of the case before any disciplinary process commences.
- The Clerk should inform the employee of the circumstances of the problem and give them an opportunity to put their case in response before any decision is made.
- Employees have the right to be accompanied at any formal disciplinary meeting.
- The employee has the right to appeal against any formal decision made.
- For allegations of criminal acts, the Clerk will consult in confidence with the Chairman of the Council and the Chairman of the Finance and General Purposes Committee before a decision is made to put the case in the hands of the Police.

3.3. At this preliminary stage the employee may wish to be represented by a single companion, who is either a:

1. work colleague,
2. employee representative, or
3. trade union official (a trade union representative who is not an employed official must have been certified by their union as being competent to accompany an employee).

Legal representation is not permitted. The Council will not bear costs. The specific needs and circumstances of employees or their representatives will be catered for as far as reasonably practicable.

- 3.4 In exercising the statutory right to be accompanied an employee must make a reasonable request. What is reasonable will depend on the circumstances of each individual case.
- 3.5 The companion should be allowed to address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing. The companion does not, however, have the right to answer questions on the employee's behalf, or address the hearing if the employee does not wish it, or prevent the Council from explaining their case.
- 3.6 In all cases, the Council's Equal Opportunities Policy will be adhered to.
- 3.7. At every stage of the procedure the employee will be advised of the nature of the complaint against them and the potential penalty and will be given the opportunity to state their case before any decision is made.
- 3.8. Where a serious allegation has been made against an employee it may be necessary, in exceptional cases, to consider a short period of paid suspension for that person pending a potential disciplinary process. However, it should be emphasised that this course of action should only be considered if absolutely necessary and kept under review. It should be

made clear to the person about whom the complaint has been made that the suspension is not a disciplinary sanction. Decisions concerning suspension will be made by the Clerk.

#### **4.0. RECORD KEEPING**

- 4.1. Records will be kept in accordance with the Data Protection Act 1998 (unless there is a legitimate reason not to do so e.g. the protection of witnesses).
- 4.2. Copies of meeting records should be given to the employee and their representative for agreement, including any formal minutes that may have been taken.

Records will include:

- The complaint against the employee.
  - The employee's defence.
  - Findings from the process, and actions taken including reasons for that action.
  - Whether an appeal was made and the outcome of that appeal if relevant.
  - Any grievance raised during the disciplinary process.
  - Any further relative developments that may arise.
- 4.3. Records relating to disciplinary hearings will be summarised and retained confidentially and anonymously in a file to be kept with the Clerk, in order to provide a record of outcomes to enable a consistent approach to be taken in future cases.

#### **5.0. PROCEDURE**

##### **5.1 Informal Action**

It is anticipated that the majority of cases that involve issues of minor misconduct will be dealt with on an informal basis by the Clerk as part of their day to day duties of monitoring employees' performance and behaviour. If the issues are too significant to be dealt with in this way, or the issues dealt with continue after an informal approach has been taken, the following formal procedure should be followed.

##### **5.2. Formal Action**

Step 1: Establish the facts of each case

- It is important to consider the need to carry out necessary investigations of potential disciplinary matters without unreasonable delay so as to establish the facts of the case. In some cases, this will require an investigatory meeting to be held with the employee and any potential witnesses, before proceeding to any disciplinary hearing. In

others, the investigatory stage will be part of the collation of facts for use at a disciplinary hearing.

- In misconduct cases, where practicable, different people should carry out the investigation hearing and the disciplinary hearing.
- If it is deemed necessary to hold a meeting to establish facts the employee will receive a letter inviting them to an investigatory meeting (**Standard Letter 1**). It will be made clear to the employee that this is not a disciplinary hearing and that they can be accompanied.
- In cases where a period of suspension with pay is considered necessary, this period should be as brief as possible and should be kept under review. It should be made clear that suspension is not a disciplinary action.

### Step 2 – Notification of hearing

A formal hearing will be conducted by the Clerk.

The Clerk will write to the employee stating formally what they are alleged to have done wrong. (**Standard Letter 2**). This letter should provide enough information for the employee to understand the nature of the allegation/s and why, if proven, this is not acceptable. This letter should also invite the employee to a hearing, to discuss the problem in more detail. The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case. It should also confirm the employee's right of representation, and enclose copies of any documentation that will be used or produced at the hearing.

### Step 3 – Formal Hearing

The process at the hearing will be:

- The Clerk will explain the nature and issues surrounding the problem raised and go through all of the documentary and other evidence, being used in connection with this issue including calling witnesses as appropriate.
- The employee will then have an opportunity to respond to the allegations made, including asking questions, presenting evidence, calling witnesses and raising any issues in connection with evidence provided by any witnesses called. They should also be given an opportunity to raise points about any information provided by witnesses.
- Where the Clerk or the employee intends to call relevant witnesses they should give advance notice that they intend to do this.

If an employee cannot attend the hearing, they should advise the Clerk in advance or as soon as this is known. If this is for circumstances beyond their control e.g. illness, the Clerk will arrange an alternative hearing date. If the employees' representative cannot attend the proposed hearing date, the employee may put forward a reasonable alternative date.

If an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause, the hearing may proceed in the employee's absence and the Clerk will make a decision on the evidence available.

#### Step 4 – Outcome

The Clerk will decide, following this hearing, whether any disciplinary action will be taken in this instance. The employee will be advised in writing the outcome of the hearing, and this letter will specify what, if any, action will be taken. (**Standard Letter 3**). Advice may be sought from an independent advisor as to the type of action appropriate in the circumstances. The Clerk shall take into account all of the evidence available, with due consideration to any precedents elsewhere in the Council and with consideration of the employee's disciplinary and general record.

### **6.0. POTENTIAL OUTCOMES OF HEARING ARE:**

#### 6.1. No Action

The Clerk decides, following consideration of the facts, that no further action is required and the matter is dropped and the records of the hearing are destroyed.

#### 6.2. Formal Action – Written Warning

If the employee was found to be guilty of misconduct at this level, a written warning will be issued. This will be confirmed in writing and will specify:

- The nature of the misconduct and the changes required in behaviour.
- That this is the first step of the Formal Procedure and their failure to meet this standard in the future could lead to a final written warning and ultimately dismissal.
- Their right of appeal in this process.

Subject to one year's satisfactory conduct this warning will be disregarded for disciplinary purposes and the records of the process expunged from the personal file.

#### 6.3 Formal action - Final Written Warning

Where the misconduct continues, or where an issue arises that is significantly serious, a final written warning may be issued. The employee will be informed of:

- The reason for the final written warning
- The required improvements in conduct and the consequences of not meeting the required standards of conduct e.g. dismissal
- Their right of appeal in this process

Subject to two years' satisfactory conduct this warning will be disregarded for disciplinary purposes and the records of the process expunged from the personal file.

A final written warning will be issued by the Clerk.

6.4 Formal action - Dismissal or Other Sanction

Where the misconduct is considered sufficiently serious, this could result in dismissal with notice. In the event the misconduct is considered gross misconduct, the outcome could be dismissal without notice. Nothing in this procedure precludes the Council from seeking financial redress from the employee as appropriate e.g. in cases of theft. The decision to dismiss may only be taken by the Clerk. The employee will be advised of the reasons for the termination, the effective date of dismissal and their right of appeal in this process.

**7.0. THE PROCEDURE FOR DEALING WITH GROSS MISCONDUCT**

7.1. Gross misconduct issues are acts or omissions which result in a serious breach of contractual terms. Issues that may fall into this category are:

- Theft, fraud or deliberate falsification of records.
- Deliberate damage to Council property, misuse of the Council's name or property, or bringing the Council's name into disrepute
- Fighting, assault, or bullying or harassment
- Incapability through alcohol
- Incapability through illegal or recreational drugs
- The unauthorised use of computer hardware and software, including the downloading of unauthorised software (including games, instant messaging services, etc), introducing viruses or other malicious software either to the Council's own network or elsewhere, visiting and/or downloading content from offensive sites, or computer hacking.
- Serious negligence causing loss, damage or injury
- Serious acts of insubordination
- Breaches of confidentiality
- Serious infringement of health and safety rules
- Breach of confidence
- Discriminatory practices
- Smoking within Council owned buildings, enclosed areas or vehicles

(The above list is not exhaustive).

7.2. If the Clerk considers an employee to be guilty of gross misconduct, and is considering a dismissal without notice, an appropriate investigation will still be undertaken prior to any action being taken and a fair disciplinary process will be followed. A short period of paid suspension may be appropriate. However, it should be emphasised that this course of action will only be considered if absolutely necessary; be kept under review, and it should be made clear to the employee that the suspension is not in itself a disciplinary sanction. Decisions concerning suspension will be made by the Clerk.

## **8.0. APPEALS**

- 8.1. An employee who wishes to appeal against any disciplinary decision should write to the Clerk, giving reasons for the appeal, within five working days of receipt of the confirmation of the outcome of the hearing. An appeal may be made on grounds that:
- a) the employee believes that a finding or proposed disciplinary sanction is unfair
  - b) that new evidence has come to light or
  - c) that in their opinion the disciplinary process was not used correctly.
- 8.2 The appeal will be heard by a panel of Councillors made from either the Chairman of the Council or the Chairman of the Finance and General Purposes Committee along with two other Councillors to make up a panel of three members of the Council.
- 8.3 The appeal should be heard without unreasonable delay and ideally at an agreed time and place. The employee will be notified in writing of the arrangements for the hearing (including who will be in attendance), and of their right to be accompanied.

The decision given at appeal is final and will be confirmed in writing as soon as reasonably possible, ideally within five working days of the date of the appeal hearing. The letter will be signed by the person who hears the appeal and determines the outcome. (**Standard Letter 4**). Any action imposed may be reviewed at appeal and be upheld, rejected or varied. Gross misconduct or gross incapability dismissals will stand pending any appeal hearing.

## **9.0. SPECIAL SITUATIONS**

- 9.1. In the case of action against employees holding full time elected office in a recognised Union, the Clerk will inform the full time Union Officer.
- 9.2. If an employee is charged with, or convicted of, a criminal offence, this is not in itself necessarily a reason for disciplinary action. The individual circumstances of the case should be discussed with the Clerk, as the criminal law requires different levels of proof. The disciplinary procedure may continue in some cases, even when the outcome is unknown with regard to the criminal charges.
- 9.3. The above process has to be followed. Where there are concerns regarding violence etc., the process should be suspended and if appropriate the Police called.
- 9.4 In some circumstances the employee may raise a grievance that is related the case. If this happens the matter would normally be dealt with as part of the disciplinary proceedings. However, the Clerk can advise dependent on the circumstances of each case.

**STANDARD LETTER 1 (Notice of investigatory meeting)**

DISCIPLINARY

**Personal and Confidential**

Dear .....

I have received an allegation that ....., this is a serious matter if proven. In order to establish the facts and if further action is to be taken it will be necessary to hold a fact-finding meeting.

This meeting will be held on [date]....., at [time] ..... in [details of venue] ..... I must stress that this meeting is not the disciplinary hearing and is merely to establish the facts.

You may wish to be accompanied by a work colleague, employee representative, trade union or other representative if you wish.

Can you please confirm whether you and your representative, if required by you, can attend this meeting?



**STANDARD LETTER 2 (Formal Action – Notification of Hearing)**

DISCIPLINARY

**Personal and Confidential**

Dear .....

I write to inform you that in accordance with the Council's Disciplinary Policy there are allegations that you have .....

You are required to attend a disciplinary hearing to discuss this matter in more detail.

The hearing will be held on [date]....., at [time] .....  
in [details of venue] .....

You have the right to be accompanied by a work colleague, employee representative, trade union or other representative if you wish.

Can you please confirm whether you and your representative, if required by you, can attend this hearing?

[In cases of serious misconduct or potential gross misconduct] You should be aware that a possible outcome of the hearing could be your dismissal from the Council with or without notice.

[If suspended] The terms of your suspension remain as stated until a decision on the outcome has been reached.

If you have any questions regarding the process, please contact me on .....

**STANDARD LETTER 3 (Formal Action – Outcome of Disciplinary Hearing)**

DISCIPLINARY

**Personal and Confidential**

Dear .....

I refer to your disciplinary hearing held on ..... at  
which you were accompanied by .....

After full consideration, I am writing to advise you that [specify nature of  
misconduct] was found to be unacceptable and that you are being issued with a  
[specify nature of action] / you have been dismissed with notice / dismissed for  
gross misconduct, therefore without notice.

*(Please see paragraphs 7.3. and 7.4. for further guidance).*

The reasons for this decision are as follows.....

[If a warning or final written warning is issued] Failure to improve your conduct or  
a repeat of the incident could lead to further formal action under the Disciplinary  
Policy, including the termination of your contract.

Subject to [one / two] years' satisfactory conduct this [specify nature of action] will  
be disregarded for disciplinary purposes and the records of the process  
expunged from the personal file.

You have the right to appeal this decision. Should you wish to exercise your right  
to appeal, you should write to the Clerk, giving reasons for the appeal, within five  
working days of receipt of this letter.

**STANDARD LETTER 4 (Appeals – Outcome of Appeal Hearing)**

**DISCIPLINARY**

**Personal and Confidential**

Dear .....

You appealed against the decision of the disciplinary hearing that you be dismissed/subject to disciplinary action [delete as appropriate].

The appeal meeting was held on ..... I am now writing to inform you of the decision taken by .....[insert name/title of Councillor] who conducted the appeal meeting, namely that the decision to ..... stands/the decision to ..... be revoked [specify if no disciplinary action is being taken or what the new disciplinary action is]. The reasons for this are as follows.....

You have now exercised your right of appeal and this decision is final.