

## Policy Statement

It is necessary for the proper operation of the Council's business and the health and safety of the it's employees that the Council operates a disciplinary procedure. The following procedure will be applied fairly in all instances where disciplinary action is regarded as necessary by the Council's management save to the extent that a minor reprimand is given for any minor act of misconduct committed by an employee.

## Scope and Purpose

The scope and purpose of the policy is:-

- Encourage all employees to achieve and maintain the Council's standards of conduct
- Ensure that all alleged failures of discipline are handled, fairly, reasonably and consistently.

## Responsibility for Implementation

The responsibility for Implementation of the Policy lies with:

- The Head of HR to ensure that all Line Managers are aware of the policy and to advise upon its use.
- Line Managers to ensure that the policy is applied consistently within their teams.
- Individual employees in respect of compliance with the procedures described

## Policy

The Council has a responsibility to ensure that employees are advised as to the specific rules and standards that should be maintained. The Disciplinary Procedure ensures that employee misconduct is managed in an effective consistent and fair manner. The Procedure gives the employee the opportunity to hear and respond to any allegations made against them and the right of appeal against any subsequent disciplinary action taken.

These procedures are contractual and will normally be adopted in the interests of fairness but the Council reserves the right at its discretion to omit or modify some or all of these procedures. Employees will not ordinarily be dismissed for a first disciplinary offence.

Where time limits are referred to in the course of this procedure they may be varied by agreement between the employee and the Council.

Employees have the right to be accompanied at a formal disciplinary hearing by a fellow worker or trade union official of their choice.

## Procedure

Matters that the organisation views as amounting to disciplinary offences include (but are not limited to):

- persistent bad timekeeping;
- unauthorised absence;
- minor damage to the organisation's property;

- failure to observe the organisation's procedures;
- abusive behaviour;
- unreasonable refusal to follow an instruction issued by a manager or supervisor;
- poor attendance;
- smoking in non-designated areas of the organisation's premises; and
- Bribery offences under the Bribery Act 2010.

## Investigation

An employee's manager will thoroughly investigate any matter that is reasonably suspected or believed to contravene any of the Council policies or rules or may otherwise be a disciplinary matter. The employee will be informed as soon as possible as to the fact of an investigation and when it has been concluded.

There may be instances where suspension with pay is necessary while investigations are carried out. The Council has the right to suspend with pay where there are reasonable grounds for concern that evidence may be tampered with, destroyed or witnesses pressurized before the disciplinary hearing, or if there is a potential risk to the business or other employees or third parties in allowing the employee to remain at work.

Depending on the circumstances of the case, the employee may be invited to attend an investigatory interview. If such an interview is held prior to a disciplinary hearing, the employee will be informed at the outset that the interview is an investigatory interview. There is no right for employees to be accompanied at an investigatory interview.

## Procedure following an Investigation

Where, upon completion of an investigation, there are reasonable grounds to believe that an employee has committed an act of misconduct; the employee will be invited to attend a disciplinary hearing before the employee's line manager or manager of a similar level to the line manager. In the event of a disciplinary hearing taking place the Council will:

- a) give the employee a minimum of five working days' advance notice of the hearing;
- b) tell the employee the purpose of the hearing and that it will be held under the Council's disciplinary procedure;
- c) explain the employee's right to be accompanied at the hearing by a fellow worker or trade union official;
- d) give the employee written details of the nature of his/her alleged misconduct; and
- e) provide to the employee all relevant information (which should include statements taken from any fellow employees or other persons that the organisation intends to rely upon against the employee) not less than five working days in advance of the hearing.

Where the employee is unable to attend a disciplinary hearing and provides a good reason for failing to attend, the hearing will be adjourned to another day. The organisation will comply with (a) above in respect of giving notice of the rearranged hearing. Unless there are special circumstances in mitigation against it, if the employee is unable to attend the rearranged hearing, the rearranged hearing will take place in the employee's absence. The employee's fellow worker or trade union official may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation.

Where the chosen companion is unavailable on the day scheduled for the meeting, it will be rescheduled, provided that the employee proposes an alternative time within five working days of the scheduled date.

## Role of companion

The employee's chosen companion has the right to address the hearing to put the employee's case, sum up the case and respond on the employee's behalf to any view expressed at the hearing. The companion may also confer with the employee during the hearing. However, there is no requirement for the employer to permit the companion to answer questions on behalf of the employee, or to address the hearing where the employee indicates that he/she does not wish this.

## The Disciplinary Hearing

A disciplinary hearing will normally be conducted by the employee's line manager together with a representative from the HR Department. Any member of management responsible for the investigation of the disciplinary offence(s) shall not be a member of the panel, although such managers may present any supporting facts and material to the disciplinary hearing. The employee will be entitled to be given a full explanation of the case against him/her and be informed of the content of any statements provided by witnesses. The employee will be able to call his/her own witnesses. He/she will be permitted to set out his/her case and answer any allegations. The employee will be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. He/she will also be given the opportunity to raise points about any information provided by witnesses. Where the Council intends to call relevant witnesses it will give the employee advance notice of this. The employee must also give advance notice if he/she intends to call relevant witnesses.

The Council may adjourn the disciplinary proceedings if it appears necessary or desirable to do so (including for the purpose of gathering further information). The employee will be informed of the period of any adjournment. If further information is gathered, the employee will be allowed a reasonable period of time, together with his/her fellow worker or trade union official, to consider the new information prior to the reconvening of the disciplinary proceedings.

As soon as possible after the conclusion of the disciplinary proceedings, the employee's Line Manager will convey the decision of the panel to the employee and will also inform the employee what disciplinary action, if any, is to be taken. The decision will be confirmed in writing. The employee will be notified of his/her right of appeal under this procedure.

## Disciplinary action

Where, following a disciplinary hearing, the Council establishes that the employee has committed a disciplinary offence; the following disciplinary action may be taken:

- a) Where a minor offence or offences have been committed, a recorded oral warning may be given. The warning will ordinarily state that any further misconduct will render the employee liable to further, more severe disciplinary action. The employee should be informed of the period that the warning will remain "live". During this period, the Council may rely on such a warning in the event of further misconduct on the part of the employee.
- b) Where either a more serious disciplinary offence has been committed or further minor offences have been committed by an employee following a recorded oral warning that remains "live", the employee will receive a first written warning. The warning will:
  - i. set out the nature of the offence committed;
  - ii. inform the employee that further misconduct is liable to result in further disciplinary action under this procedure;
  - iii. specify the period for which the warning will remain "live", after such period the warning will automatically lapse; and
  - iv. state that the employee may appeal against the warning.
- c) Where a serious disciplinary offence amounting to gross misconduct has been committed, thereby justifying summary dismissal, but the Council decides, after taking into account all appropriate circumstances, that a lesser penalty is appropriate, or, where an employee commits further

disciplinary offences after a first written warning has been issued and remains "live", a final (or combined first and final) written warning may be given. Such a warning will:

- i. set out the nature of the offence committed;
- ii. inform the employee that further misconduct is likely to result in his/her dismissal; and
- iii. state that the employee may appeal against the warning.

Where the employee has committed further acts of misconduct (these being acts of misconduct other than gross misconduct) following a final written warning given under c. above, the employee may be dismissed with notice or with pay in lieu of notice.

Where the organisation establishes that an employee has committed an act of gross misconduct, the employee may be summarily dismissed.

Where a final written warning is given to an employee under c. above, the organisation may also impose on the employee:

- i. disciplinary suspension;
- ii. demotion; or
- iii. in line with any provision in the contract of employment, transfer to a job of a lower status.

The above sanctions may be imposed in conjunction with other forms of disciplinary action, or as an alternative to dismissal.

## Appeal

An employee may appeal against any disciplinary sanction imposed against him/her, with the exception of an informal oral warning. The appeal will be heard by a senior manager who has not been involved in the decision to impose the disciplinary sanction on the employee, and a representative from the HR Team, (the panel). The senior manager is obliged to consider any representations made by the employee, the employee's fellow employee or trade union official and those of the manager who conducted the investigation and the manager who conducted the disciplinary hearing and imposed the disciplinary sanction. The senior manager hearing the appeal must decide on the basis of both sets of representations, together with any subsequent facts that may have come to light, whether or not to uphold the disciplinary sanction. In the event that the senior manager finds for the employee, the senior manager shall allow the appeal and shall remove all records of the disciplinary sanction from the employee's record. In the event that the senior manager does not accept the representations made by or on behalf of the employee, the senior manager must uphold the disciplinary sanction.

When lodging an appeal, the employee should state:

- a) the grounds of appeal; and
- b) whether he/she is appealing against the finding that he/she has committed the alleged act or acts of misconduct, or against the level of disciplinary sanction imposed.

The employee must provide written notice of the appeal within five working days of being informed of the disciplinary sanction being imposed against him/her.

Appeal hearings will normally take place within 14 days of receipt of the employee's written notice of appeal.

Upon completion of the appeal, the senior manager conducting the hearing will convey his/her decision to the employee. The decision will be confirmed in writing within five working days. The Council's decision at the appeal is final.

Where an appeal lies against a dismissal by the panel, the panel's decision to dismiss will have had immediate effect and, therefore, if the dismissal is by notice, the period of notice will already have

commenced on the date that the decision was given by the panel. If the panel's decision was to dismiss the employee summarily without notice, the Council will be under no obligation to reinstate or pay the employee for any period between the date of the original dismissal and the appeal decision and the original date of termination will stand. In the event that the panel's decision to dismiss is overturned, the employee will be reinstated with immediate effect and he/she will be paid for any period between the date of the original dismissal and the successful appeal decision. His/her continuous service will not be affected.

## **Gross misconduct**

Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the Council. In the event that an employee commits an act of gross misconduct, the Council will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice.

Matters that the Council views as amounting to gross misconduct include (but are not limited to):

- stealing from the organisation, members of staff or the public;
- other offences of dishonesty;
- falsification of a qualification that is a stated requirement of the employee's employment or results in financial gain to the employee;
- falsification of records, reports, accounts, expense claims or self-certification forms, whether or not for personal gain;
- sexual misconduct at work;
- fighting with or physical assault on members of staff or the public;
- deliberate damage to or misuse of the organisation's property;
- serious damage to the organisation's property;
- drunkenness or being under the influence of illegal drugs while at work;
- possession, custody or control of illegal drugs on the organisation's premises;
- serious breach of the organisation's rules, including, but not restricted to, health and safety rules and rules on computer use;
- gross negligence;
- conviction of a criminal offence that is relevant to the employee's employment;
- conduct that brings the organisation's name into disrepute; and
- discrimination or harassment of a fellow worker on the grounds of sex, sexual orientation, race, disability, age or religion or belief, gender reassignment, marriage or civil contract, maternity or pregnancy related..

Other acts of misconduct may come within the general definition of gross misconduct.

## **Miscellaneous**

This procedure will be periodically reviewed. Any amendment to it will be notified to employees in writing by the Council's HR manager and such written advice will inform employees as to the date when any amendment comes into effect. This may be by means of the Council's Intranet, notice boards or staff newsletter.