

## **SECTION 9:**

- **DISCIPLINE**
- **GRIEVANCE**

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# **CALDERDALE COUNCIL**

## **Disciplinary Procedure for All Employees**

### **1. INTRODUCTION AND APPLICATION**

Disciplinary rules and procedures promote good employment relations whilst maintaining fairness and consistency in the treatment of employees in the workplace.

All parties have identified that the Council's disciplinary code should be fair, reasonable and equitable in its application.

The following disciplinary procedures apply to all employees in the Council with the exception of the Chief Executive, Directors, Chief Officers and Heads of Service, Teaching Staff and other school based (non teaching) staff.

### **2. GENERAL CONSIDERATIONS**

- 2.1 All disciplinary matters will be dealt with by the Chief Officer or his/her nominated officer. In common with most organisations it is recognised by the Council that discipline in the workplace is essential for the conduct of the Authority's affairs, the efficient running of its services and for the safety and wellbeing of all its employees and the general public.
- 2.2 All disciplinary matters should be dealt with as quickly as possible whilst recognising the need for a full and thorough investigation to be undertaken.
- 2.3 The Council recognises that it is the right and duty of all Chief Officers and officers authorised by them to control and maintain acceptable standards of behaviour, conduct and performance in the workplace.
- 2.4 Minor cases of misconduct should be dealt with through informal supervision and counseling without resorting to the Council's formal disciplinary policies and procedures. The disciplinary procedures that follow are not intended to interfere with, or supersede, this duty and are reserved for misconduct which in the opinion of the Chief Officer or his/her nominated officer requires formal disciplinary action.
- 2.5 In the interest of good employee relations any formal disciplinary action by way of written warnings given to an employee will be communicated to his/her Trade Union Representative/Companion (if any) as soon as possible unless the employee requests otherwise.
- 2.6 No disciplinary action shall be taken against a Union Representative, or a Safety Representative, until the circumstances of the case have been discussed with the Corporate Lead for HR and a full-time official of the Trade Union concerned.
- 2.7 It is the responsibility of the employee to contact their Trade Union representatives should they wish to be represented at a disciplinary hearing.

### **3. CONDUCTING THE INVESTIGATION**

- 3.1 Investigations need to be conducted as quickly and as thoroughly as possible to protect the interests of the Council and to avoid the imposition of undue pressure on the employee.
- 3.2 Officers conducting or participating in disciplinary investigations should not subsequently chair or otherwise advise the chair in any formal disciplinary hearing.

### **4. SUSPENSION PRIOR TO DISCIPLINARY HEARING**

- 4.1 Suspension prior to a disciplinary hearing should be used in those cases where the possibility of serious disciplinary action could arise. Normally, suspension from work, pending the findings of any investigation, would be appropriate in instances where there is a risk to other employees, members of the public, clients, the Council's assets, or the employee him/herself may interfere with the investigation itself; or what the employee is alleged to have done is so serious that it is better not to have the employee at work pending further investigation.
- 4.2 All suspensions should immediately be confirmed in writing to the employee(s) concerned.
- 4.3 All employees who are suspended prior to a formal disciplinary hearing shall receive full contractual pay for the duration of the suspension.
- 4.4 If suspension is considered an appropriate course of action, it should be instigated immediately the management concern has been identified. Any delay in this matter may severely jeopardise management's case at any future disciplinary hearing/employment tribunal. Staff in HR are available to give advice on individual cases.
- 4.5 The period of suspension should be kept as short as possible but sufficient to enable a detailed enquiry into the case to be undertaken. A disciplinary hearing, if considered necessary, should be held as soon as the investigation has been completed.

### **5. THE PRE-DISCIPLINARY MEETING**

- 5.1 In all cases management will need to meet with employees in order to clarify/seek explanations relating to potential disciplinary situations before considering whether or not a formal disciplinary hearing needs to be arranged.

### **6. PRIOR TO HEARING**

- 6.1 The officer investigating the complaint can consult with either the Corporate Lead for HR to ascertain advice on good practice, precedents and procedures to be followed to the circumstances in question.
- 6.2 Once a decision is taken that the formal disciplinary process needs to be actioned - it is the responsibility of the Chief Officer or the nominated officer to write to the employee stating:

- (a) The venue and time of the disciplinary hearing.
  - (b) The precise allegation which the employee is called upon to answer.
  - (c) The employee's right to be represented by his/her Trade Union, or other representative of his/her choice – it should be made clear that it is up to the employee to make any arrangements regarding such representation.
- 6.3 The Chief Officer must enclose (wherever possible) any statements relevant to management's case or written evidence to be presented by management.
- 6.4 The Chief Officer must ensure that the date of the hearing will give the employee sufficient time to prepare their case and to allow time to arrange for representation.
- 6.5 The Chief Officer should approach the Corporate Lead for HR to ensure the presence of one of the HR advisers in all disciplinary hearings.
- 6.6 Investigating Officers will ensure that any disciplinary investigation is in compliance with the Council's agreed policies, procedures, regulations and adopted codes of practice applicable to the Directorate/Service area.
- 6.7 If the disciplinary offence relates to theft or fraud, the Audit Section in the Finance Service must be consulted in the first instance.
- 6.8 The Council may undertake the surveillance and monitoring of employees who are the subject of investigations concerning allegations of theft, fraud and corruption in accordance with the Council's Fraud and Dishonesty Policy.

## **7. THE DISCIPLINARY HEARING**

All formal disciplinary action should be undertaken within the following procedure.

- 7.1 At all stages of the hearing the employee will be fully informed of the complaint against him/her and be given every opportunity to state his/her case before any decision is reached.
- 7.2 The employee will be given the right to be accompanied by his/her Trade Union Representative or any other person of his/her choice.
- 7.3 The employee will be informed of his/her right to a short adjournment at any time during the disciplinary hearing.

7.4 The following procedure should be followed within the hearing:

- |                            |  |
|----------------------------|--|
| Chairperson                | <ul style="list-style-type: none"><li>- Makes introductions</li><li>- Outlines reason for the hearing</li><li>- Explains the procedure to follow</li><li>- Informs employee and/or representative of their right to request adjournment at any time during the hearing</li></ul>                   |
| Management Representative  | <ul style="list-style-type: none"><li>- Presents case</li><li>- Is cross examined by employee and/or Representative</li><li>- Presents witnesses (if appropriate) for questioning</li><li>- Cross examination of witnesses by employee and/or Representative.</li></ul>                            |
| Employee or Representative | <ul style="list-style-type: none"><li>- Presents case</li><li>- Cross examination by Management representative</li><li>- Presents witnesses (if appropriate)</li><li>- Cross-examination of witnesses by Management representative.</li></ul>  |
| Chairperson                | <ul style="list-style-type: none"><li>- Informs both parties of their right to an adjournment before summing up.</li></ul>   |
| Management Representative  | <ul style="list-style-type: none"><li>- Sums up</li></ul>  |
| Employee or Representative | <ul style="list-style-type: none"><li>- Sums up</li></ul>  |
| Chairperson                | <ul style="list-style-type: none"><li>- Asks both parties to leave the room.</li><li>- Decides on course of action in conjunction with the HR representative.</li><li>- Calls both parties back into room and informs all parties of decision reached and course of action decided upon.</li></ul> |

The Chairperson and the HR representative have the right to ask questions at any stage during the procedure.

## 7.5 The Role of the Representative at Disciplinary Hearings

A representative at a disciplinary hearing may:-

Put forward the employee's case;

Cross examine the management representative and any witness(es), as appropriate.

Sum up the case;

Confer and adjourn with the employee during the hearing (subject to the agreement of the Chair).

## 8. DISCIPLINARY ACTION – WARNINGS

8.1 Following the disciplinary hearing, where an employee's act, behaviour, conduct or performance at work is such as to warrant disciplinary action, the Chief Officer (or nominated officer) may impose one of the following courses of action:-

- (i) a First written warning which shall remain on the employee's disciplinary record\* for a period of 6 months from the date of the disciplinary hearing.
- (ii) an Intermediate warning which shall remain on the employee's disciplinary record\* for a period of 9 months from the date of the disciplinary hearing.
- (iii) a Final written warning which shall remain on the employee's disciplinary record\* for a period of 15 months from the date of the disciplinary hearing.

8.2 \*After the expiration of these periods the warnings shall be physically expunged from an employee's disciplinary record. However, they will remain on an individual's personal file for non-disciplinary purposes only – the details of which must be kept confidential and secure in accordance with data protection requirements.

8.3 All formal warnings will be confirmed by letter under the signature of the Chief Officer or the nominated officer. This letter must state the grounds for the action taken and confirm the individual's right of appeal. The letter must be delivered by hand or recorded delivery. (In the event of the absence of the Chief Officer or nominated officer, the letter will be signed by another appropriate senior officer in the Directorate.)

8.4 A copy of the letter confirming the warning will be forwarded to the employee and to his/her Trade Union or other representative unless the employee requests otherwise.

8.5 All current disciplinary records shall be kept by HR. These records must be kept confidential, but may be seen by the Trade Union Representative or other representative subject to the consent of the employee concerned, if the records are going to be used in a subsequent disciplinary context.

- 8.6 All employees who have had disciplinary action short of dismissal taken against them should be advised that as long as the warning is current, a further act of misconduct may result in further action being taken which could ultimately lead to dismissal. The employee will also be advised of the necessary improvements that will be required.

## 8.7 Dismissal for Gross Misconduct

A Chief Officer or his/her nominated Officer may dismiss an employee on the grounds of gross misconduct as appropriate after following the recognised procedure. **Gross misconduct is conduct of such a nature that the Authority cannot reasonably continue to allow the employee's presence at the place of work.** Dismissal for gross misconduct does not have to be preceded by a formal or final warning.

Examples of offences of gross misconduct which have previously led to the dismissal of local authority employees are detailed below:-

- Unauthorised removal of the Authority's property.
- Failure to comply with the Authority's recognised policies and procedures.
- Theft.
- Fraud and Corruption.
- Sexual offences.
- Sexual misconduct at work.
- Fighting.
- Physical assault.
- Falsification of subsistence and expenses claims etc.
- Falsification of qualifications which are a stated requirement of employment or which result in financial gain.
- Malicious damage to the Authority's assets and property.
- Serious breaches of safety regulations endangering other people, including deliberate damage to, neglect of, or misappropriation of safety equipment.
- The persistent and willful refusal to carry out a reasonable instruction despite warnings of the consequences of continued refusal.
- The commission of a serious breach of duty prejudicial to the Authority's relations with members of the public or other outside contracts or any willful attempt to damage the standing or position of the Authority.
- Racial harassment.
- Sexual harassment.
- Inappropriate use of email/internet.

This list is for illustrative purposes only and is neither exclusive or exhaustive in its application.

## 8.8 Top-up Dismissal

A Chief Officer or his/her nominated officer may dismiss an employee with the appropriate statutory notice for committing a further offence(s) after following the recognised disciplinary procedure if that employee has a current warning(s) on their record.



## **9. RIGHT OF APPEAL**

- 9.1 If the employee, either individually or through his/her representative, wishes to exercise such right of appeal against any form of disciplinary action taken against him/her they must do so by writing to the Corporate Lead for HR, Calderdale MBC, Human Resources, 3<sup>rd</sup> Floor, Westgate House, Westgate, Halifax, HX1 1PS, within 10 working days of receipt of the letter confirming the disciplinary action.
- 9.2 If an employee successfully appeals to the Appeals Panel against a decision to terminate his/her employment on the grounds of gross misconduct, he/she shall be entitled to be paid their normal remuneration from the time of dismissal to the time of reinstatement in accordance with the decision of the Employee Appeals Panel.
- 9.3 If the employee has taken up alternative employment in the meantime there is no obligation on the employee to return to their previous employment.

## **10. RAISING A GRIEVANCE DURING DISCIPLINARY PROCEEDINGS**

In the event of an employee raising a grievance during the course of a disciplinary hearing that is related to the particular circumstances of the case, the Chief Officer should consider suspending the disciplinary procedure for a short period of time to enable the grievance to be dealt with. Dependant upon the circumstances, the Chief Officer may have to consider bringing in an alternative Manager to deal with the disciplinary process.

## **11. EXCLUSIONS FROM THE DISCIPLINARY PROCEDURE**

This procedure does not apply to:-

- (i) Casual workers.
- (ii) An employee(s) in a compulsory redundancy situation (ie where notice of termination of employment has been issued solely because of redundancy).
- (iii) Where the probationary period has not been completed, and dismissal arises from unsuitability for confirmation of appointment.

## **12. KEEPING RECORDS**

It is important, and in the interests of both employers and employees, to keep written records during the disciplinary process. Information must be provided for all allegations and could be used as evidence in an Employment Tribunal, Civil/Criminal Court proceedings and subsequent insurance claims.

All records will be treated as confidential in accordance with the Data Protection Act 1998. This Act gives individuals the right to request and have access to certain personal data.

It is important to ensure that the following is documented as part of the disciplinary process:

- The letter requiring the employee to attend the disciplinary hearing, which must include the allegation/complaint against the employee;
- The letter confirming the outcome of the disciplinary hearing, which must include the findings made and action taken, together with reasons for the action taken;
- Whether an appeal has been lodged;
- The outcome of the appeal;
- Details of any grievance that was raised during the disciplinary procedure and subsequent developments.

## **SUPPLEMENTARY GUIDANCE ON DISCIPLINARY ISSUES**

### **CONDUCTING THE INVESTIGATION**

#### **Identify the problem**

- what are the issues involved?
- who is involved?
- where did the alleged incident happen?
- when did it happen?
- what is the detail?
- any codes/rules/standards/policies and procedures involved?

#### **Carrying out the Investigation**

- establish the facts as objectively as possible
- discuss the case with either the Corporate Lead for HR or one of the team
- interview all parties concerned
- get written statements and documented evidence wherever possible
- ensure thorough preparation of the case
- ensure location of interviews free from interruptions
- examine relevant documentation
- check for any previous warnings
- any employee relations issues; are there any disputes currently in progress which might have a bearing on the allegation(s) in question?

#### **Conducting the pre-disciplinary interview**

- a. Tell the employee the reason(s) why you want to see him/her. Try to be specific about the reason(s). You will need to exercise judgment as to how much detail to go into as this will depend upon the issue to be addressed. You need to ensure that the employee is made clear as to the purpose and reason(s) for the meeting.
- b. If you are able to, give the employee any written documentation prior to the meeting. Again, judgment will have to be used here whether to disclose written documentation at this stage – the documentation may contain sensitive information, information that is confidential or not entirely relevant to the employee, or you may legitimately need to

“confront” the employee at the meeting with certain documents in order to seek an “immediate” explanation.

- c. Always advise the employee beforehand of who will be present at the meeting. Try and keep the numbers of people involved to a minimum.
- d. Always advise the employee of his/her right to be represented by a trade union representative/work colleague/any other representative of his/her choice.
- e. Remember that this meeting is not the formal disciplinary hearing – its main purpose is for management to determine whether or not there is a case to answer and if so whether a formal disciplinary hearing should be arranged.
- f. Keep the timescales short. It is perfectly in order to arrange such meetings with a relative short timescale – for example it is in order to inform an employee in the morning that you wish to see him/her the same afternoon or following morning.
  - if the employee cannot give a reasonable explanation as to the alleged incident you need to consider arranging a formal disciplinary hearing. You will need to make a recommendation to your Chief Officer or the nominated officer in your Service. You may also need to give consideration to the possibility of Suspension pending the disciplinary hearing, eg where the allegations are very serious or where the employee’s return to work before the hearing is not wise because people or property could be at risk (see paragraph 4).

### **Union representatives and Health and Safety Representatives**

If the employee is a union representative or a health and safety representative you should discuss the circumstances with the Corporate Lead for HR who will discuss the matter with a full-time official of the employee’s trade union. (NB: No formal action of any kind can be considered against a union representative or a health and safety representative without this prior consultation).

### **Police Involvement**

If the Police are involved in a disciplinary matter the Corporate Lead for HR must be consulted. Judgment will need to be exercised to take account of the circumstances at hand. The fact that the Police are involved does not mean that the investigation process comes to a standstill. However in certain cases the Council might be entirely dependant on Police investigations or findings.

## **DISCIPLINARY HEARING PROCEDURE**

### **THE EMPLOYEE APPEALS PANEL PROCEDURE**

1. The Chief Officer or his/her representative and the Appellant and his/her representative (ie 'the parties' and the parties' representatives) should each prepare a statement, explaining the basis of their case.
2. Following any discussions between the parties, any documents must be sent to the Head of Democratic and Partnership Services to arrive at least one week before the date of the hearing.
3. All documents will be sent out to Members of the Panel in accordance with the provisions of the Data Protection Act 1998 and the Freedom of Information Act 2000, and also to both parties.
4. The parties to the hearing may choose to be represented or may represent themselves.
5. If either party, together with their representative if any, fail to attend the hearing it may proceed in their absence, at the discretion of the Members of the Panel.
6. Either party may call witnesses to support their case.
7. The parties, or one representative for each party, shall be the spokespersons. No-one else shall speak except as a witness or if called upon to answer a question. The parties' spokespersons will present the oral submissions. Persons other than the parties' spokespersons will not be entitled to present an oral submission, except in reply to questions directly raised with them by the Members of the Panel or where asked by their representative to amplify a point raised in the submission.
8. The Chief Officer or his/her representative's case will be put first. He/she will open the case and then call any witnesses. The Appellant or his/her representative shall have the right to cross-examine each witness, after he/she has given evidence and to ask questions of the Chief Officer and/or his/her representative. The Members of the Panel may ask questions of the Chief Officer and/or his representative and of each witness in order to clarify the issues.
9. The Appellant's case will then be put and the Chief Officer or his/her representative and then the Members of the Panel shall be entitled to ask questions of the Appellant and/or his representative and any witnesses.
10. The Chief Officer or his/her representative may then summarise his/her case, without introducing any new matters. The Appellant or his/her representative may then submit his/her closing remarks without introducing any new matters.
11. The hearing will then close without further discussion. Both parties will retire whilst the Panel, advised by the HR representative, makes its decision. If the Panel wishes to seek further clarification from either party then both parties shall be recalled whilst the questions are put.

12. Once the Panel has reached a decision, the parties shall both be recalled for the decision to be announced by the Chair.

**NOTE:**

Adjournments, where reasonable, will be considered/allowed at the discretion of the Chair.

**- PROCEDURE TO BE USED FOR**

- A) APPEALS AGAINST DISCIPLINARY ACTION**
- B) APPEALS AGAINST REDUNDANCY**

**WRITTEN DOCUMENTATION FOR DISCIPLINARY APPEALS**

Chief Officers when presenting management cases at Appeals Panels must ensure that all written documentation to be presented in evidence/support of a given case must be forwarded to the Corporate Lead for HR to accompany the covering report to the Panel. Submission of written evidence/documentation to the Panel on the day should not take place. The Corporate Lead for HR should also be notified if it is the intention of the Chief Officer to introduce witnesses at the Panel so that the appellant or his/her representative can be informed in good time.

## **SUPPLEMENTARY GUIDANCE FOR DISCIPLINARY APPEALS**

### **The Process**

- An employee has a right of appeal against any level of disciplinary sanction imposed by a Chief Officer, or nominee.
- All appeals, which are properly submitted and received by the Corporate Lead for HR within the permitted ten (10) working day timescale, are heard by the Appeals Panel of the Council.
- An appeal hearing before the Appeals Panel is not simply a mere review of the original decision, it is a comprehensive rehearing of the case which includes the opportunity for Members to consider any additional relevant information which was not previously available to the Chief Officer or the Appellant at the original disciplinary hearing. It also provides a final opportunity within the Council to remedy any earlier procedural defects which may have occurred, however unlikely this may be.
- At the conclusion of an appeal hearing the Appeals Panel has the discretion to:-
  - uphold the employee's appeal
  - dismiss the appeal
  - substitute another penalty
  - exceptionally to refer the case back for further investigation and reconsideration.

### **Practical and Administrative Issues**

- Upon receipt of a written notice of appeal from an employee, which is received within the permitted timescale, the Corporate Lead for HR will immediately advise the appropriate employing service and the Democratic Services Section that an appeal has been received and send a copy of the notification to them.
- The Corporate Lead for HR will acknowledge receipt of the appeal and advise the appellant of the following:-
  - a) arrangements will be made for the appeal to be considered by the Appeals Panel at a date and time to be notified
  - b) s/he has the right to be accompanied at the appeal hearing by a trade union or other representative of their choice who may speak on his or her behalf
  - c) the responsibility for making any arrangements regarding such representation is the appellant's
  - d) there is a right to call witnesses and produce documents in his/her own support (appellants may need to discuss the logistics beforehand of doing this with management)

- e) copies of any documents, including a statement explaining the basis of the appeal, which it is intended to refer to at the hearing, should be sent as soon as possible and in any event at least eight (8) days before the date of the hearing to the Democratic Services Section. For ease of reference the documents should be clearly numbered in the order in which it is intended to refer to them.
- A copy of the procedure to be followed at the Appeals Panel hearing will be sent to the appellant by the Corporate Lead for HR with the letter acknowledging receipt of the appeal.
- The Democratic Services Section will liaise and correspond, as necessary, with the Elected Members, Appellant, the Appellant's representative and Representative of the employing service and the Corporate Lead for HR and make all the necessary practical arrangements for the appeal hearing.
- The Corporate Lead for HR will arrange for the preparation of a brief covering report to the Appeals Panel outlining the issue for consideration. This will be forwarded to the Democratic Services Section as soon as possible after a date for the hearing has been agreed.

The covering report will normally refer to three (3) appendices as follows:-

- Appendix 'A', confirming the outcome of the disciplinary hearing before the Chief Officer, or his/her nominated officer, ie the disciplinary letter.
- Appendix 'B' containing the documents submitted by the management representative presenting the case and upon which it is intended to rely at the hearing.
- Appendix 'C' will include any documents submitted by the appellant for consideration at the appeal.
- The employing service will be responsible for the following matters:-
  - a) preparing Management's case, setting out the circumstances leading up to the disciplinary hearing chaired by the Chief Officer or his/her nominated officer
  - b) presenting the management's case, on behalf of the employing service, at the appeal hearing
  - c) arranging for the attendance of witnesses at the hearing to support any written statements previously made by them regarding the events resulting in the issue of a disciplinary sanction
  - d) arranging for the attendance at the appeal of the Chief Officer, or his/her nominated officer, who chaired the formal disciplinary hearing, for the purpose of explaining to the Panel why s/he came to the decision that s/he did
  - e) the collection, collation, numbering, scheduling and forwarding to the Democratic Services Section of all the documents required for inclusion at Appendix 'A' and 'B' of the Corporate Lead for HR's report – these documents should be forwarded as soon as



possible and in any event not later than eight (8) days before the date of the appeal hearing.

- The covering report - prepared by the Corporate Lead for HR - together with the Appendices A, B and C will be despatched to Members of the Appeals Panel, Appellant, the Appellant's representative, Representative of the employing service and the Corporate Lead for HR by the Democratic Service Section in accordance with the provisions of the Access to Information Procedure Rules contained in the Council's Constitution.

### **The Appeal Hearing**

- The appeal hearing before the Appeals Panel of the Council is a comprehensive re-hearing and re-examination of the case.
- The Corporate Lead for HR will advise the Members of the Panel on all procedural and employment issues concerning the appeal.
- Documents other than those previously circulated should not be tabled on the day of the hearing unless it is completely unavoidable in which case the Chair of the Panel will exercise his/her discretion in deciding whether to accept them for consideration.
- The Chair of the Panel may adjourn proceedings at any time during the hearing in order to take opinion, in camera, on any issue concerning the conduct of the appeal. During any such adjournment the parties will leave the room.
- In order to consult or take advice the management representative of the employing service and the appellant may also request an adjournment which may be agreed at the discretion of the Chair of the Panel.
- If either party, together with their representative if any, fail to attend the hearing it may proceed in their absence, at the discretion of the Members of the Panel.
- Witnesses called upon to attend the appeal hearing will remain outside the meeting room until required to give their evidence to the Panel. After giving evidence they will leave the meeting room but will remain available in a separate room until formally released by the Chair of the Panel.
- The Chief Officer, or his/her nominated officer, who previously chaired the formal disciplinary hearing will be permitted, together with the management representative of the employing service, to be present throughout the appeal hearing.
- One representative for each of the parties will be the principal spokesperson and will present the case on behalf of the employing Service or the Appellant. No one else will be entitled to speak except as a witness or if called upon to answer a question amplify or provide clarification.
- When the hearing is convened the Chair of the Panel will introduce the parties and explain the procedure to be followed.

- In the event that the Appellant attends the hearing unaccompanied, the Chair will confirm with the individual that s/he understands his/her right to be accompanied and is willing to proceed in the absence of such representation; the Chair will then use his/her judgement in terms of proceeding.

- The representative of the employing Service will present their case first.

After introducing the management's case the representative will call any witnesses who have information about the events under consideration and to support any written statements previously made by them. On completion of his/her evidence to the Panel, the Appellant, or representative, will have the right to cross examine the witnesses about the information he/she has given before the next witness is called.

- The Chair and the Corporate Lead for HR may ask questions in order to clarify issues or request amplification from the parties or other witnesses, at any time during the hearing.
- Before the management's case is concluded and after its witnesses have been heard the representative of the employing Service will be entitled to call the Chief Officer, or his/her nominated officer, who chaired the formal disciplinary hearing for the purpose of explaining to the Panel why s/he came to the decision that s/he did in all the circumstances. Witnesses may also be cross examined by the Appellant or his/her representative.
- The Appellant's case will then be put and the representative of the employing Service will be entitled to ask any relevant questions of the Appellant, his/her representative and any witnesses.
- The Chair of the Panel will offer both of the parties a short adjournment prior to them being given the opportunity to present a final summary of their case.
- The representative of the employing Service may then summarise his/her case, without introducing any new matters. The Appellant, or representative, may then also make his/her closing remarks without introducing any new matters.
- The hearing will then close without further discussion. Both parties will retire whilst the Panel, advised by the Corporate Lead for HR, makes its decision. If the Panel wishes to seek further clarification from either party then both parties shall be recalled whilst the questions are put.
- The parties shall both be recalled for the decision to be announced by the Chair.

## **DISCIPLINARY HEARINGS AND SICKNESS ABSENCE**

The following actions should be considered for employees facing disciplinary action who subsequently absent themselves from work with sick leave:-

- Consider whether a referral to the Council's Occupational Health Doctor is appropriate. This will not automatically be the case, but each case will be judged on its individual merits.
- Give consideration to the nature of the employee's illness.
- Seek advice from the Corporate Lead for HR.

Having considered the above, a judgement will be made as to whether a disciplinary hearing will be set up in the normal way.

- Taking into account the above, and using judgement appropriate to the circumstances, If the employee indicates that they are too ill to attend, or simply does not attend the hearing, write to him/her again with another date advising that the disciplinary hearing will definitely go ahead on the revised date and that if the employee considers that he/she is too ill to attend in person that he/she can send a representative of their choice. The employee should be afforded the opportunity of submitting a written statement on his/her behalf.



# Grievance Procedure

## **1. POLICY STATEMENT**

- 1.1 In the workplace, disputes will from time to time arise between employees and the Council, and between employees and fellow employees. It is important that such disputes are dealt with as quickly as possible since if they are not addressed then they are likely to fester and result in bad employee relations. In some cases, they may develop into major disputes.
- 1.2 In this regard, employees with disputes are advised to raise any grievance they may have at an early stage, and in accordance with the Council's Grievance Procedures. These procedures seek to promote good employment relations whilst maintaining fairness and consistency in the treatment of employees in the workplace.

## **2. POLICY OBJECTIVES**

- 2.1 This policy aims to:-
  - Promote good employment relations when dealing with workplace disputes, and maintain fairness and consistency in the treatment of employees in the workplace.

## **3. EMPLOYEES RESPONSIBILITIES**

- 3.1 To fully understand the procedure for raising a grievance.

## **GRIEVANCE PROCEDURE**

### **1. APPLICATION**

- 1.1 The following procedure applies to all employees of the Council with the exception of Teaching Staff and other school based (non teaching) staff.
- 1.2 The Council's grievance procedure is an important tool for managing disputes in the workplace.
- 1.3 All grievances should be brought with the intention of as far as possible resolving the dispute informally and swiftly. When a grievance is raised, all parties are asked to try and see things from the point of view of the other person in an attempt to resolve matters amicably.
- 1.4 Where matters cannot be resolved informally, then the formal stages of the procedure will need to be followed.
- 1.5 Employees have the right to appeal against the outcome of the findings of a formal grievance hearing, however appeals MUST identify:
  - what elements of the outcome of the grievance hearing they disagree with
  - the grounds for disputing the outcome.

### **2. REMEDY AND OUTCOME**

- 2.1 Appeals which fail to identify any actual grounds of appeal will be rejected. Such grounds could include, eg that a document was not considered, that new evidence has come to light since the grievance hearing, or that the conclusion of the grievance hearing was perverse.

### **3. REPRESENTATION**

- 3.1 At any stage of the procedure the employee shall have the right to be accompanied by a Trade Union Representative or other representative of their choice. The representative may not act in a legal capacity.
- 3.2 Employees are responsible for contacting their representative should they wish to be represented at any stage of the procedure for settling their grievance.
- 3.3 At any stage of the procedure, advice/assistance should be sought from HR. A representative from HR will be present at all hearings.
- 3.4 Grievances can only be lodged within 3 months of the incident occurring except equal pay grievances which operate under a different process.

#### 4. PROCEDURE FOR SETTLING GRIEVANCES FOR EMPLOYEES

- 4.1 If you have a grievance relating to your employment or some working practice of the Council you should discuss this in the first instance with your line manager. Employees should aim to resolve grievances informally with their line manager wherever possible. If you cannot resolve your grievance informally then you need to formally raise your grievance using the pro forma standard letter at point 7.
- 4.2 If your grievance relates to issues concerning your line manager, you should discuss this with their line manager in the first instance.

*If your grievance relates to issues concerning the Chief Executive you should forward details of your grievance to the Corporate Lead for HR. If your grievance relates to issues concerning the Corporate Lead for HR you should forward details of your grievance to the Chief Executive.*

- 4.3 Your line manager or the appropriate person will provide you with a written reply as soon as possible after the grievance meeting has taken place.
- 4.4 If you are dissatisfied with the reply, you, or your representative, **within five working days** of receipt of the reply should re-submit the grievance to your Chief Officer. If the grievance is against the Chief Officer it should be submitted to the Chief Executive who will nominate an appropriate senior person to deal with the issue. The grievance must be put in writing stating the reasons for your grievance and what outcome you are looking for.
- 4.5 Your Chief Officer (or other senior nominated person) will arrange a grievance hearing as soon as practically possible with the interested parties and, if you so desire, with your representative. Both parties may call witnesses and/or produce written statements relevant to the proceedings – such statements should be submitted by the employee (or their representative) to the Chief Officer no later than 10 working days before the grievance hearing. Management should provide their response to the submission to the Chief Officer no later than 5 working days before the hearing. Any submissions presented to the Chief Officer by either party outside the above timescales will not be considered at the hearing. An HR Adviser will attend the hearing. The process for providing submissions for a grievance hearing are as follows:
- The Chief Officer receives the official grievance and arranges a date for the hearing.
  - The employee submits details and statements of the grievance and any witnesses within 10 working days of the date of the hearing to the Chief Officer.
  - Management submits their response to the grievance and details of any witnesses within 5 working days of the date of the hearing to the Chief Officer
  - The Chief Officer will then send out all information to both parties prior to the hearing taking place.

- 4.6 Your Chief Officer (or other senior nominated person) will confirm the decision of the grievance within ten working days of the date of the hearing.
- 4.7 If you continue to be aggrieved in respect of your original complaint, you may appeal to the Corporate Lead for HR giving full details of the appeal, stating precisely:
- (i) what parts of the decision you dispute
  - (ii) your grounds for disputing the outcome
  - (iii) how you want your grievance to be resolved.

This should be submitted to the Corporate Lead for HR in writing within **five working days** of receipt of the written decision. In the unusual circumstances of additional evidence being relied on, such additional documents and/or statements should be submitted at this stage, together with reasons for not submitting such documents and/or statements prior to the grievance hearing (again documents submitted but not referred to in the appeal letter or in witness statements will not be considered). An appeal hearing conducted by an Appeals Panel made up of elected Members will then be convened at the earliest opportunity, and the management response and any additional documents or statements being relied upon will be sent to the employee no later than 5 working days before the hearing.

- 4.8 The Corporate Lead for HR will advise the employee of the decision in writing as soon as possible after the grievance appeal.
- 4.9 There is no right of appeal against the decision taken by the Appeals Panel.
- 4.10 If a grievance is raised by an employee following termination of employment then the Council will provide a written response based on the submission and management response to the submission. If an employee raises a grievance and subsequently gives notice that they are leaving the Council or that their employment is being terminated then every effort should be made to hear the grievance before they leave. If it is not possible to hear the grievance before the end of their employment then a written response should be made to the grievance raised. Grievances submitted more than three months after termination of employment (and six months for grievances relating to equal pay) will not be considered by the Council.
- 4.11 Should the Chief Officer at the Stage 1 hearing or the Appeals Panel at the appeal hearing deem that the grievance is frivolous or vexatious or hopeless and made out of spite then a disciplinary investigation may take place which may result in disciplinary action being considered against the employee(s) who have raised the grievance.
- 4.12 Managers hearing grievances are encouraged to take whatever steps they feel appropriate to avoid confusion and to speed up the process. Such steps may include:



- Calling the parties together in advance of the hearing to clarify the issues and to identify and, where appropriate, narrow the points to be determined;
- Giving advice and setting timescales for the disclosure of documents and statements etc;
- Adjourning hearings to consider further evidence, speak to witnesses, take further advice etc;

4.13 If a grievance is raised by an employee after disciplinary proceedings have commenced against them, a decision will be taken to either suspend the grievance until after the disciplinary issue has been dealt with or to hear the grievance at the disciplinary hearing. Only in exceptional circumstances will disciplinary proceedings be suspended to deal with a grievance that has been raised after disciplinary proceedings have commenced. HR will provide advice on this issue at the time.

## **5. NON ATTENDANCE AT MEETINGS**

5.1 If employees are unable or unwilling without good reason to attend meetings concerning the resolution of a grievance, the Chief Officer (or other nominated senior person) has the authority to proceed with the hearing and make a decision based on the available evidence. This also applies to appeal hearings.

## 6. PROCEDURE AND PROCESS TO BE FOLLOWED AT GRIEVANCE AND GRIEVANCE APPEAL HEARINGS

The following procedure should be followed at the meeting:

- |                                  |  |
|----------------------------------|--|
| Chair<br>(advised by HR adviser) | <ul style="list-style-type: none"><li>- Makes introduction</li><li>- Outlines reason for the meeting</li><li>- Explains the procedure to be followed</li><li>- Informs employee and/or representative of their right of adjournment at any time during the meeting</li><li>- Identifies/clarifies the issues to be considered.</li></ul>   |
| Employee or<br>Representative    | <ul style="list-style-type: none"><li>- Details their grievance</li><li>- Presents case</li><li>- Witnesses (where called) read out their statement as appropriate</li><li>- Management has the opportunity to cross-examine employee and witnesses.</li></ul>   |
| Management Representative        | <ul style="list-style-type: none"><li>- Presents Management's case regarding the issues raised by the employee or representative</li><li>- Witnesses (where called) read out their statement</li><li>- The employee and/or representative has the opportunity to cross-examine witnesses.</li></ul>  |
| Chair                            | <ul style="list-style-type: none"><li>- Informs both parties of their right to an adjournment before summing up.</li></ul>   |
| Management Representative        | <ul style="list-style-type: none"><li>- Sums up.</li></ul>   |
| Employee or Representative       | <ul style="list-style-type: none"><li>- Sums up.</li></ul>   |
| Chair                            | <ul style="list-style-type: none"><li>- Concludes the meeting and asks both parties to leave the room.</li><li>- After deliberation, calls the parties back into the meeting and informs them of the outcome of the hearing (such decision confirmed in writing).</li><li>- If the Chair is unable to inform the employee immediately of the outcome of the hearing, the decision should be provided in writing within ten working days.</li></ul> |

NOTE: The Chair (and the representative of HR) has the right to ask questions at any stage during the hearing.

Management may wish to keep a note of the issue and resolution of the employee's grievance for information purposes.

## 7. PRO FORMA LETTER FOR RAISING A GRIEVANCE

Reference

Date

Dear..... (Supervisor /Line Manager)

### **Re: Notification of Official Grievance**

I would like to formally notify you of my grievance.

I am lodging a grievance in respect of

**\*[provide full details of what your grievance is and who and what is involved]**

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In notifying you of my grievance the outcome I am looking for is as follows:

**[You must complete this section for your grievance to be acknowledged as an official grievance]**

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Yours sincerely

## **PROCEDURE FOR DEALING WITH LACK OF CAPABILITY**

1. These guidance notes relate to lack of capability; they are intended to minimise poor performance and provide a mechanism for dealing with sub-standard work.
2. Poor performance and sub-standard work can arise for a variety of reasons, and the Council recognises that it has a duty to its employees to help them conform to the Council's expectations at work.
3. This procedure deals with poor performance/sub-standard work due to lack of capability which may be attributable to inexperience, inadequate training, a lack of the necessary skills or aptitude that would facilitate effective and acceptable performance.
4. Cases of poor performance and sub-standard work due to culpable reasons such as carelessness, negligence, idleness or intransigence will be dealt with in accordance with the provisions of the disciplinary procedure.
5. Chief Officers will ensure that all employees are aware of the performance and standard of work expected of them, and the range of duties to be undertaken.
6. Employees will be assisted through encouragement, guidance and training, to reach and maintain an acceptable standard of performance.
7. If an employee's work does not reach, or falls below, the required standard normally expected of the post occupied, or performance is otherwise unsatisfactory, the following procedure shall be applied in conjunction with the Corporate Lead for HR:
  - i) There shall be an investigation of the sub-standard work or poor performance in order to identify the extent of the problem.
  - ii) The employee shall be made aware of the expectations of the job and given the opportunity to explain the apparent deficiencies in performance.

It may be appropriate at this stage, if such deficiencies are attributable to significant changes in either the nature of the tasks to be undertaken or if the equipment to be used with which the employee feels unable to cope, to consider early retirement/voluntary severance in accordance with the appropriate Local Schemes.
  - iii) Where the reason is attributable solely to a genuine ignorance of the required standard, the position shall be rectified and no further action taken.
  - iv) Chief Officers will assist employees whose performance or work standards are deficient by agreeing realistic work targets, appropriate training, counselling or close supervision. The nature of this assistance will be

dependent upon the extent of the deficiency, and the practicability of any remedial action worthy of consideration.

- v) The employee will be advised of the likely consequences of a failure to achieve a significant and sustained improvement.
- vi) The employee's performance will be monitored and frequently assessed within an agreed timescale, bearing in mind the nature of duties and the length of time in which it could be considered reasonable to expect the required improvement. In normal circumstances, the monitoring period will not be less than one month.
- vii) If there is a failure to improve, or continued unsatisfactory performance, the employee will be required to attend a meeting with the Chief Officer or a nominated officer.

The employee will be entitled to representation at this meeting.

Prior to the meeting the employee will be reminded, in writing, of the alleged deficiencies, the efforts which have been made to improve performance, and the reason(s) why it is believed that there has been insufficient improvement.

At the meeting the employee will be given the opportunity to offer an explanation.

If the explanation is not reasonable, a written, or final written warning will be issued, dependant upon the circumstances of the case.

The employee will be informed of their appeal rights.

It may be appropriate, at this stage, to consider redeployment to a post with a salary more commensurate with the capability of the employee.

Redeployment will only take place with the agreement of the employee. If there is no agreement, there will be no redeployment.

- viii) The warning will identify the gap between the Chief Officer's expectations, and the employee's performance, summarise the action taken to date, and advise the employee that dismissal will be contemplated if work performance does not reach the standard normally expected of the post occupied.
- ix) It may also be appropriate to withhold incremental progression, subject to the right to appeal against the decision to the Employee Appeals Panel.

If an increment is withheld because of unsatisfactory performance, and there is a subsequent improvement, the increment may then be paid from a date to be determined by the Chief Officer.

- x) Following a written, or final written warning, there shall be a specified period of monitoring to give the employee the opportunity to meet the required standards. In normal circumstances the monitoring period will not be less than one month.
  - xi) Where there is a failure to achieve a significant and sustained improvement following a final written warning, and a Chief Officer considers that incapability is adjudged to be fundamental and irremediable, the employee will be liable to dismissal with notice.
  - xii) Before implementing dismissal, the employing Chief Officer will consider whether redeployment to a post with a salary more commensurate with the capability of the employee would be more appropriate. Redeployment will only take place with the agreement of the employee. If there is no agreement, there will be no redeployment. The employee shall be made aware that the offer of redeployment is a substitute for dismissal. The only appeal rights arising from this provision will be against dismissal.
- 8. At all stages of this procedure, the employee shall be entitled to representation by a trade union or some other person.
  - 9. Dismissal shall only take place after consultation with the Corporate Lead for HR.
  - 10. This procedure supplements, but does not replace that section of the Chief Officers' Conditions of Service which deals with capability.
  - 11. The consideration of warnings to or dismissal of Chief Officers/Directors will be dealt with by the Cabinet Committee.
  - 12. Appeals against dismissal, or written warnings, issued as a result of the application of this procedure should be submitted to the Corporate Lead for HR within ten days of receipt of the written notification of dismissal or warning.