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Human Resources &
Workforce Development

DISCIPLINARY PROCEDURE

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1. THE PURPOSE OF THIS PROCEDURE

1.1 This procedure is designed to help all employees achieve and maintain satisfactory standards of behaviour and comply with the Council's rules. Its aim is to ensure consistent and fair treatment for everyone. It is not intended to apply to issues of poor work performance, which are handled under a separate process.

1.2 The procedure applies to all employees other than:

- chief officers
- school-based staff, operating under the LMS scheme
- employees within their probationary period

for whom separate procedures exist.

2. THE PRINCIPLES OF THIS PROCEDURE

2.1 This procedure is primarily concerned with improving discipline, not with applying disciplinary penalties. It aims for an outcome, which is fair and constructive in pursuit of the Council's delivery of services to the community.

2.2 Managers are responsible for specifying the Council's standards of behaviour, enforcing rules and ensuring that breaches of these are tackled promptly. Where a potential disciplinary issue comes to light, the manager will act in accordance with this procedure without delay.

2.3 The whole process must be given a high priority by the manager and the employee concerned. The time required to complete an investigation will depend upon the complexity, the individual circumstances of the case and the issues involved. The investigation should normally be completed within 20 days of the decision to conduct an investigation being notified to the employee. If necessary, a further 10 days will be allowed and the employee will be notified of this. If it is clear that the investigation will take longer, for example if a crucial witness is sick or outside agencies' reports are needed, further extensions may be necessary. In this event a revised date will be set for completion and the employee informed. A decision to take or not to take disciplinary action must be made with the minimum delay and communicated to those involved.

2.4 No disciplinary action will be taken without a prompt and thorough investigation into the circumstances (this will normally be undertaken by the employee's manager) and a hearing, which will be held by a manager designated by the Corporate Director or Service Head.

2.5 All proceedings, witness statements and records will be confidential in line with Council policy.

- 2.6 Managers are responsible for clarifying standards of behaviour and dealing with minor shortcomings informally. This may include giving informal warnings. Wherever possible the informal method should be used to avoid the need for the formal procedure. This informal process does not constitute action under this procedure.

3. THE OPERATION OF THIS PROCEDURE

- 3.1 The manager who is to decide whether disciplinary action is justified (normally the Manager who will chair the disciplinary hearing) will ensure that the employee is:
- given information about the complaint against them
 - given the opportunity to prepare and state their case
 - notified of their right to bring an accredited trade union representative or work colleague to the hearing called to decide on the appropriate action to be taken.
- 3.2 If, after investigation and/or a formal hearing, the manager decides that disciplinary action is not warranted the manager will inform the employee of that decision. However, where disciplinary action is taken:
- i) no employee will be dismissed for a first breach of discipline, except in cases of gross misconduct
 - ii) the employee has the right of appeal against any disciplinary action under this procedure (with the exception of paragraph 3.4 ii) (below).
- 3.3 Where the matter requires disciplinary action, the following procedure will be used.
- 3.4 **First Warning: Stage 1**
- i) *Formal oral warning*

If conduct does not meet acceptable standards (and this is substantiated at a hearing), the employee will normally be given a formal oral warning. The manager will give this. The employee will be told the reason for the warning, that it is the first stage of the disciplinary procedure and that there is the right of appeal. A brief note will be kept of the fact that the warning has been given, the reason for it and any specific improvements required. The warning will be disregarded for further disciplinary purposes after six months, subject to continued satisfactory conduct (except in very exceptional circumstances where the period may be extended).
 - ii) Where the investigation entirely substantiates an allegation of misconduct and the employee agrees that on the evidence available any subsequent disciplinary hearing would endorse

disciplinary action without qualification, a formal oral warning may be issued by the appropriate manager. The mechanism for this action will be a meeting between the manager, a HR & WD Business Partner, the individual and their representative. All parties must have had a copy of the investigating officers' report at least two working days prior to the meeting. The manager, a representative from HR and the individual must be in agreement on the issue of the warning. The individual must be advised that the warning has the same status as a warning issued at a Disciplinary Hearing, however, an appeal will not be permitted as the warning is issued with the agreement of the relevant parties. The employee retains the right to bring an accredited Trade Union representative or work colleague to the meeting.

iii) *Formal written warning*

If the offence is a serious one, or if a further offence occurs within the currency of an oral warning, a formal written warning will be given by the manager (following a disciplinary hearing). This will give details of the complaint, the improvement required and the period over which it must take place. It will warn that action under the further stage of the procedure will be considered if the improvements required are not met, and tell the employee of the right of appeal. A copy of the warning will be kept on the personal file but will be disregarded for disciplinary purposes after twelve months, subject to continued satisfactory conduct (except in very exceptional circumstances where the period may be extended).

3.5 Final Warning: Stage 2

If there is still a failure to improve following previous disciplinary action OR the misconduct is sufficiently serious to warrant only one written warning, but insufficient to justify summary dismissal, a final warning will be given in writing to the employee by the Corporate Director or a senior manager designated by them (following a disciplinary hearing). This will give details of the complaint, will warn that dismissal will result if there is no satisfactory improvement and will state the right of appeal. A copy of the warning will be kept, but will be disregarded for disciplinary purposes after eighteen months (except for in very exceptional circumstances).

3.6 Dismissal: Stage 3

If conduct is still unsatisfactory, OR the employee is judged to have committed gross misconduct, dismissal by the Corporate Director or their designated senior manager will normally result (following a disciplinary hearing). The employee will be provided as soon as reasonably possible with written details of dismissal, the date on which the contract is to end, the reason for dismissal and the right of appeal.

- 3.7 The procedure can be commenced at any stage. The commencing stage will depend on the nature of the alleged misconduct (e.g. for very serious first offences that stop short of being gross misconduct by omitting first warnings and starting at consideration of a final warning). Managers can adjourn proceedings over which they are presiding and refer the matter to a more senior level of management if it becomes apparent to them that the level of possible disciplinary action is outside their delegated power.
- 3.8 In cases which appear to involve gross misconduct, consideration must be given to suspending the employee -see below.

4. APPEALS

- 4.1 At an appeal hearing, the disciplinary action taken will be reviewed. The outcome will be to confirm it, substitute a lesser penalty, or cancel it. The decision is final.
- 4.2 An employee who wishes to appeal against formal disciplinary action must inform the designated officer in writing within 10 working days of being given the notification of the disciplinary action. The written notice of appeal must give details of the grounds for the appeal. This must make it clear which aspect(s) of the decision the employee wishes to appeal against, and why. Reasons such as 'unfair' or 'too severe' would not be sufficient in themselves to justify an appeal (A summary should be given of the procedural irregularities referred to, the new factual evidence, or the reason why the level of disciplinary action is considered too severe).
- 4.3 The designated officer to contact for appeals is:
- for an appeal against a first warning or a final warning: the line manager of the manager who gave the warning. If the warning was issued by the Corporate Director, another Corporate Director will be designated by the Chief Executive to hear the appeal;
 - for an appeal against dismissal: the Chief Executive. Appeals will be heard by elected Members at an Appeals Committee
- 4.4 Appeals against warnings will normally be heard within 15 working days of the appeal being lodged. Appeals against dismissal will normally be heard within 30 working days of being lodged.
- 4.5 The employee is allowed to bring a trade union representative or work colleague to the appeal hearing. The letter notifying them of the hearing date must state this.

SPECIAL CONSIDERATIONS

5.1 SUSPENSION

The employee can be suspended for a short period by the authorised manager, who will not normally be below a third tier officer, for instance where there is an allegation of gross misconduct or where the employee's presence at the workplace may interfere with the impartiality of the investigation. Suspension will be on full pay. It must be clearly stated to the employee that this does not constitute a disciplinary penalty. The manager, with the HR & WD Business Partner, should review the appropriateness of the continued suspension frequently.

5.2 HANDLING GROSS MISCONDUCT

Gross misconduct is generally seen as misconduct serious enough to destroy the employment contract between the employer and the employee and make any further working relationship and trust impossible.

Examples of the sort of conduct that the Council regards as gross misconduct, rendering the employee liable to dismissal without notice, are:

- serious breach of the Council's standing orders, financial regulations or the employees' code of conduct
- serious misuse of the Council's property or name
- bringing the Council into disrepute
- serious abuse of the Council's computer equipment / software
- misuse of official position for personal gain
- serious breach of any professional code of conduct applicable to the job dishonesty, including theft and deliberate falsification of records
- acceptance of bribes
- physical violence
- serious bullying, discrimination or harassment in line with the Council's Equal Opportunities policy
- deliberate damage to property
- serious insubordination
- being incapable of adequately performing duties as a result of drink or illegal drugs
- serious negligence which causes or might cause unacceptable loss, damage or injury
- serious infringement of health and safety rules
- serious sexual misconduct (This refers to behaviour at or away from work that affects suitability for employment e.g. Child protection issues)
- serious breach of confidence (e.g. the inappropriate disclosure of confidential information). Note, appropriate use of the

Whistleblowing procedure would not be a serious breach of confidence

Note: Some of the above examples are linked to other Council policies, such as procedures for dealing with child protection matters, and should be clarified with the relevant HR & WD Business Partner, before action is commenced.

5.3 TRADE UNION OFFICIALS

This procedure will not be commenced in relation to a trade union official until the circumstances of the case have been discussed with a senior representative or paid official of the trade union.

5.4 ARRANGING MEETINGS

The employee will be given at least five working days' notice of all hearings, including appeals; (ten working days' notice in the case of gross misconduct hearings), and at the same time forwarded all documentation that will be submitted to the hearing.

5.5 RECORDS

Records will be kept detailing the nature of any breach of disciplinary rules, the employee's response, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These will normally be kept on the employee's personal file, which he or she can have access to in accordance with the Council's policy on personal files.

5.6 RIGHT TO BE ACCOMPANIED

The employee is allowed to bring an accredited trade union representative or work colleague to all formal hearings / meetings. The letter notifying them of the hearing date must state this.

Note: Within this procedure, the term 'manager' is used to mean the person designated by the Corporate Director as the line manager of the employee for disciplinary purposes.