Great Aycliffe Town Council

DISCIPLINARY POLICY & PROCEDURE

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DISCIPLINARY POLICY & PROCEDURE

1 The Council is committed to the highest levels of competence and conduct and strives to ensure a safe and efficient workplace for all employees. It is recognised that discipline is necessary for the efficient operation of the business and for the health and safety at work of all employees; and that disciplinary procedures are necessary to assist in maintaining conduct and for promoting fairness and order in the treatment of individuals.

2 This procedure has been produced to help promote orderly employment relations as well as fairness and consistency in the treatment of all employees. It is designed to encourage an improvement in an individual's conduct where necessary and not merely a method of applying disciplinary sanctions.

3 Nothing in this procedure is intended to remove the right of a Manager to give employees advice or firm guidance when the employee is believed to have committed a minor infringement of the established standards of conduct, whether or not the manager makes a note of the advice or guidance for future reference.

4 **Disciplinary Offences**

4.1 Breaches of reasonable conduct at work can take various forms. The following list is not exclusive and there may be other examples appropriate to the nature of a particular job which would warrant disciplinary action following a thorough examination of the circumstances involved:-

- Misuse of Council facilities (e.g. e-mail and internet)
- Blatant disregard for Council Policies & Procedures
- Poor timekeeping
- Unauthorised absences
- Repeated or serious failure to follow instructions
- Knowingly making false or malicious statements about other employees.

4.2 Acts which constitute gross misconduct are those resulting in a serious breach of contractual terms. Examples of gross misconduct are:

- Harassment or victimisation
- Theft or fraud
- Physical violence or bullying
- Bad behaviour, such as fighting or drunkenness
- Deliberate and serious damage to property
- Deliberately accessing internet sites containing pornographic, offensive or obscene material
- Serious insubordination
- Unlawful discrimination or harassment
- Bringing the Council into serious disrepute
- Serious incapability at work brought on by alcohol or illegal drugs
- Causing loss, damage or injury through serious negligence
- A serious breach of health and safety rules
- A serious breach of confidence

- Deliberate failure to report evidence or suspicion of any impropriety or breach, or wilful non-compliance with Data Protection principles.

Misconduct (other than Gross Misconduct)

4.3 Disciplinary action will normally involve Informal Action with a note on file for a period of 6 months or formal action via a written warning, final written warning or dismissal. Where dismissal takes place for misconduct other than gross misconduct, appropriate notice, or pay in lieu of notice, will be given.

4.4 Disciplinary suspension without pay, stoppage of pay, demotion or other penalty short of dismissal may be imposed, in conjunction with a final warning, as an alternative to dismissal, subject to the agreement of the employee.

Gross Misconduct

4.5 In cases where gross misconduct is established on the balance of probabilities, the employee will be liable to summary dismissal without notice.

4.6 Gross misconduct is regarded as misconduct of such a nature that it fundamentally breaches the contractual relationship between the employee and employer and justifies management in no longer accepting the continued presence of the employee at the place of work.

5 INVESTIGATION (Line Manager or other Nominated Manager)

5.1 Where a matter arises which is suspected or believed to be a disciplinary matter, the employee's manager, or other nominated manager, will investigate the matter promptly and adequately. The person assuming the role of investigating officer **will not be allowed** to preside over, or be a member of the panel, in subsequent disciplinary proceedings.

5.2 This may be done informally by the line manager or other nominated manager if it is considered a minor misconduct issue, see paragraph 6 below.

5.3 Where a manager, for whatever reason considers the matter to be more serious, then the formal disciplinary procedure would be implemented, see paragraph 7 below.

5.4 As part of the investigation the employee will normally be interviewed and statements obtained from witnesses. If this is done as a preliminary interview, the employee will be told at the outset that this is a preliminary interview. The employee may be accompanied to the meeting by a work colleague or accredited trade union representative, unless it is an informal action interview.

5.5 Depending on the nature of the alleged misconduct, it may be appropriate to suspend an employee from work. Careful consideration will be given by management before such a decision is taken. If it is felt that suspension is appropriate employees will be paid their normal pay and a formal meeting will be arranged as soon as reasonably possible to resolve the situation. Any suspension from work is not a disciplinary measure and will not involve any prejudgement of the outcome.

5.6 Suspension will be considered where, for example, the presence of the employee could impede the investigation; in order to avoid a repetition of the alleged misconduct; or would cause embarrassment or offence to management or other employees.

5.7 A suspended employee **should not make contact** with other employees, or persons associated with the case, or return to the workplace unless instructed to do so. The employee will be advised of a named Manager to be the point of contact with the employee for the period of suspension.

5.8 The Council reserves the right to carry out its own investigations into alleged criminal offences committed outside working hours. These investigations will only be carried out where there are reasonable grounds for believing that the nature of the activities is sufficiently serious to have an adverse effect on the ability of, or confidence in, the employee to carry out his/her duties properly.

6 INFORMAL ACTION (Manager)

6.1 Cases of minor misconduct will be dealt with informally initially. A discussion will take place with the employee and the line manager outlining the issue and setting out the improvement required. No formal action will be taken but a note will be kept on the employee's file for a period of **six months**.

6.2 When matters of concern are being dealt with on an informal basis there is no requirement for the employee to be accompanied to the meeting between the employee and manager. There will be no appeal against the informal action.

6.3 Where an informal approach has been used but improvement has not been achieved, a formal process will be instigated.

7 FORMAL ACTION (Corporate & Policy Officer or Nominated Manager)

In instances where the Town Clerk is the Line Manager the Formal Process/Disciplinary Hearing will be undertaken by the HR Advisor and Members drawn from the Personnel Sub-Committee.

Informing the employee.

7.1 If, on completion of the informal action (above) investigation, and consideration of the facts, the Manager conducting it believes, on reasonable grounds, that the employee has committed the alleged act of misconduct, a disciplinary hearing before the Corporate & Policy Officer or other nominated manager and/or HR Consultant will be arranged. The investigating manager will not be a member of the panel, but will be asked to present the supporting facts and material.

7.2 The employee will be given a minimum of five working days advance notice of the hearing in writing, told the purpose of it, with the nature of the alleged misconduct being outlined, and invited to attend with his/her representative, who may be a work colleague or accredited trade union representative.

7.3 An employee will be informed in writing of the problem including:

- what it is they are alleged to have done
- the reasons why this is not acceptable
- an invitation to a meeting with management to discuss the issue
- The employee will also be informed of his/her right to be accompanied at that meeting by a work colleague or accredited trade union representative.
- copies of any documents that will be produced at the meeting
- possible consequences.

Holding a meeting

7.4 The employee shall be informed of the timing and location of the meeting. Meetings will normally be held within 5 working days following written notification to the employee.

7.5 At the meeting the complaint against the employee will be explained and any evidence that has been gathered will be discussed. The employee will be given an opportunity to set out his/her case and answer any allegations that have been made. The employee will also be allowed to ask questions, present evidence, call witnesses and be given an opportunity to raise points about any information provided by witnesses.

7.6 If an employee is unable to attend a meeting for a valid reason or his/her trade union representative is unavailable s/he must inform management in advance a further meeting will be arranged within 5 working days of the original meeting date.

7.7 If an employee fails to attend the meeting, due to unforeseeable circumstances (e.g. illness) a further meeting will be arranged usually within 5 working days of the original meeting date. If an employee is unable to attend the further meeting without good reason, a decision may be taken in the employee's absence, based on the available evidence

Decision, outcome and action

7.8 Following the meeting, management will decide whether disciplinary action is justified or not. Where it is decided that no action is justified the employee will be informed. Where it is decided that disciplinary action is justified, consideration will be given to what form that should take. Before making a decision, management may take into account the employee's disciplinary and general record, actions taken in any previous similar case, the explanations given by the employee and – most important of all – whether the intended disciplinary action is reasonable under the circumstances.

7.9 Management will usually allow employees at least one chance to improve their conduct before they are issued with a final written warning. However, if an employee's misconduct or its continuance – is sufficiently serious, for example because it is having or likely to have, a serious harmful effect on the business, it may be appropriate to move directly to a final written warning. In cases of gross misconduct, management may decide to dismiss even though the employee has not previously received a warning for misconduct.

8 First Written Warning - Misconduct

8.1 Where, following a disciplinary meeting, an employee is found guilty of misconduct, the usual first step will be to give a written warning setting out the nature of the misconduct and the change in behaviour required.

8.2 The employee will be informed that the warning is part of the formal disciplinary process and what the consequences will be of a failure to change behaviour. The consequences may be a final written warning and ultimately, dismissal. The employee will also be informed that they may appeal against the decision. A record of the warning will be kept, but will be disregarded for disciplinary purposes after a period of **12 months**.

9 Final Written Warning

9.1 Where there is failure to improve or change behaviour in the timescale set at the first written warning stage, or where the offence is sufficiently serious, the employee will be issued with a final written warning, after the employee has been able to present their case at a meeting. The final written warning will inform the employee that failure to improve or modify behaviour may lead to dismissal or to some other penalty. The employee must also be notified of their right of appeal.

9.2 The final written warning will normally be disregarded for disciplinary purposes after a period of **18 months**.

9.3 All decisions following disciplinary meetings will be forwarded to the employee in writing.

10 Dismissal or other penalty

10.1 If the employee's conduct still fails to improve, the final stage in the disciplinary process may be dismissal or, if appropriate and mutually agreed, some other penalty such as demotion, disciplinary transfer, or loss of seniority/pay. A decision to dismiss will only be taken by management with the authority to do so.

10.2 The employee will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will terminate, the appropriate period of notice and their right of appeal.

10.3 In cases where gross misconduct is established on the balance of probabilities, the employee will be liable to summary dismissal without notice.

11 Criminal Charges or Convictions not related to Employment

11.1 An employee should inform management immediately if they have been charged or convicted of a criminal offence. If the charge or conviction of the criminal offence is not related to work, this may not in itself be a reason for disciplinary action. Management will establish the facts of the case and consider whether the matter is serious enough to warrant starting the disciplinary procedure. The main consideration will be whether the offence, or alleged offence, is one that makes the employee unsuitable for their type of work.

12 Appeals

In instances where the Town Clerk is the Line Manager the Appeal will be held with the remaining members from the Personnel Sub-Committee who will undertake the tasks outlined below.

12.1 An employee can appeal against a first written warning, a final written warning and dismissal. There is no appeal against informal action.

12.2 The time scale for requesting an appeal will be five working days from the date of the written confirmation of the outcome of the investigation.

12.3 A pro-forma (see the Council's Appeal Procedure) should be included on which the employee can give notice of appeal, including identification of the grounds for the appeal.

12.4 Records and notes of the meetings will be made available to the Member Appeal Panel (Elected Members drawn from the Council's Personnel Sub-Committee and the Town Clerk if the allegation is not against him) prior to hearing the appeal.

12.5 Employees will be contacted with the appeal arrangements as soon as possible and will be informed of their right to be accompanied at the appeal meeting by a work colleague or accredited trade union representative.

12.6 The employee and his/her representative will present the details of the grievance to the Member Appeal Panel and the Corporate & Policy Officer, or other nominated Manager, will outline the reasons for the management decision.

12.7 The Town Clerk or Member Appeal Panel Chairman will inform the employee about the appeal decision, and the reasons for it, in writing within five working days of the appeal hearing.

12.8 The decision of the Member Appeal Panel will be final.

13 Keeping Records

13.1 It is in the interests of both management and employees to keep written records during the disciplinary process. Records will include:

- The complaint against the employee
- The employee's defence
- Findings made and actions taken
- The reasons for actions taken
- Whether an appeal was lodged
- The outcome of the appeal
- Any grievances raised during the disciplinary procedure; and
- Subsequent developments.

13.2 Records will be treated as confidential and kept no longer than necessary in accordance with the Data Protection Act 1998.

13.3 Copies of meeting records may be given to the employee including formal minutes that have been taken. In certain circumstances (e.g. to protect witnesses) management might withhold some information.

13.4 In any case where disciplinary action is reconsidered and withdrawn, all written reference should be removed from the employee's personal file and s/he notified accordingly.

13.5 In relation to any further acts of misconduct on the part of the employee, if such misconduct is similar or related in nature to previous misconduct, then irrespective of the time limits above, previous offences may be taken into account in determining further disciplinary action.

14 Grievance raised during disciplinary case

14.1 If an employee raises a grievance, or an allegation of bullying, in the course of a disciplinary process that is related to the case, management will **consider** suspending the disciplinary procedure for a short period while the grievance is dealt with.

14.2 Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently. Depending on the nature of the grievance, management may consider bringing in another member of management to deal with the disciplinary process. If this is not possible, the existing Manager will deal with the case as impartially as possible.

15 Absence during a disciplinary procedure

15.1 It is important, both for the benefit of the employee and employer that the disciplinary process is concluded promptly and an outcome reached without undue delay. Where an employee is absent prior to the commencement of, or during the course of the disciplinary procedure because of ill-health or other reasons, you will be given the opportunity to attend any investigatory meetings and subsequent disciplinary hearing, if convened. You will also be given a copy of any documentation to be used at a disciplinary hearing.

15.2 In the case of absences due to ill-health a medical opinion may be required either from the employee's GP or a Medical Advisor. If the employee does not agree to medical information being provided by his/her GP or fails to attend an appointment with an Medical Advisor, a decision may have to be taken without the benefit of such information.

15.3 If an employee continues to be unavailable to attend a disciplinary hearing, a decision may be taken in your absence, based on the available evidence.