

Great Aycliffe Town Council



DISCIPLINARY POLICY & PROCEDURE

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DISCIPLINARY POLICY & PROCEDURE

Introduction

- 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. This procedure does not apply during probationary periods, nor does it apply to sickness absence which is dealt with in our Attendance Management Policy.
- 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. Capability will be managed under the Performance Management Policy.
- 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.

Disciplinary Offences

- 4 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.
- 5 Acts which constitute gross misconduct are those resulting in a serious breach of contractual terms. Some 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.

The above list is *not* exhaustive. It illustrates the type of conduct that will normally merit dismissal for a first offence. Other types of offence may also be treated as gross misconduct, depending on the seriousness of the particular facts.

Misconduct (other than Gross Misconduct)

- 6 Disciplinary action may 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. We may miss out stages of the procedure if we think this would be reasonable in the circumstances, even to result in dismissal.
- 7 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.

Gross Misconduct

- 8 In cases where gross misconduct is established on the balance of probabilities, the employee will be liable to summary dismissal without notice.
- 9 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.

INVESTIGATION (Line Manager or other Nominated Manager)

- 10 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.
- 11 This may be done informally by the line manager or other nominated manager if it is considered a minor misconduct issue.
- 12 Where a manager, for whatever reason considers the matter to be more serious, then the formal disciplinary procedure would be implemented.
- 13 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 meeting.

- 14 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.
- 15 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.
- 16 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.
- 17 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 their duties properly or where the employee's behaviour could damage the reputation of the Council or bring the Council into disrepute.

INFORMAL ACTION (Manager)

- 18 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**.
- 19 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.
- 20 Where an informal approach has been used but improvement has not been achieved, a formal process will be instigated.

FORMAL ACTION (Senior Manager 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.

- 21 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 Senior Manager 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.

- 22 The Council will send the employee a letter setting out the complaint made against them and inform them of possible outcomes of the disciplinary hearing. It will provide a minimum of three working days (72 hours) advance notice of the hearing. Also included will be relevant evidence which may, where appropriate, include witness statements. The letter will inform them that they must attend a disciplinary hearing to discuss the matter and will confirm the time, date and location of that meeting. The letter will also tell them that they have the right to be accompanied at the disciplinary hearing. If the employee does not understand the letter, they should ask their Line Manager for an explanation.

Holding a meeting

- 23 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 their 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.
- 24 If an employee is unable to attend a meeting for a valid reason or their trade union representative is unavailable they must inform management in advance a further meeting will be arranged within 5 working days of the original meeting date.
- 25 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

Recording of meetings

- 26 The employee, or any person acting on their behalf, is not normally permitted to record electronically any meeting held by the organisation as part of the disciplinary process. Any breach of this provision may lead to disciplinary action against the employee, up to and including dismissal.
- 27 In certain limited circumstances, the organisation may permit the meeting to be recorded electronically. For example, where the employee is disabled, it may be appropriate as a reasonable adjustment under the Equality Act 2010. Where the organisation permits the meeting to be recorded electronically, it will take responsibility for making the recording.

Decision, outcome and action

- 28 Following the meeting, the hearing panel 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, the hearing panel 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.

- 29 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 miss out stages of the procedure if it is considered that this would be reasonable in the circumstances, and may decide to dismiss even though the employee has not previously received a warning for misconduct.

First Written Warning - Misconduct

- 30 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.
- 31 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**.

Final Written Warning

- 32 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 under the Councils Appeals Notification and Procedure.
- 33 The final written warning will normally be disregarded for disciplinary purposes after a period of up to **18 months**.
- 34 All decisions following disciplinary meetings will be forwarded to the employee in writing.

Dismissal or other penalty

- 35 If the employee's conduct still fails to improve, the final stage in the disciplinary process may be dismissal or 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.
- 36 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.

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

Criminal Charges or Convictions not related to Employment

- 38 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.

Data protection

- 39 The Council processes personal data collected during the investigation stage and any subsequent stages of disciplinary action in accordance with its GDPR policy and the employee privacy statement. In particular, data collected as part of the investigation stage and any subsequent stages of disciplinary action is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the disciplinary procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the Council's data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under this disciplinary procedure.
- 40 We will keep records of any action taken under these disciplinary procedures. Wherever possible, these records will be treated as confidential.

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.

- 41 An employee can appeal against a first written warning, a final written warning and dismissal. There is no appeal against informal action. Appeals will be dealt with under the Council's Appeals Notification and Procedure. A pro-forma (see the Council's Appeals Notification and Procedure) should be included on which the employee can give notice of appeal, including identification of the grounds for the appeal.
- 42 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.
- 43 The decision of the Member Appeal Panel will be final.

Keeping Records

- 44 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.

45 Records will be treated as confidential and kept no longer than necessary in accordance with the Data Protection Act 2018.

Grievance raised during disciplinary case

- 46 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.
- 47 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.

Absence during a disciplinary procedure

- 48 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, they will be given the opportunity to attend any investigatory meetings and subsequent disciplinary hearing, if convened. They will also be given a copy of any documentation to be used at a disciplinary hearing.
- 49 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 a Medical Advisor, a decision may have to be taken without the benefit of such information.
- 50 If an employee continues to be unavailable to attend a disciplinary hearing, a decision may be taken in the employee's absence, based on the available evidence.
- 51 This policy does not give contractual rights to individual employees. The Council reserves the right to alter any of its terms at any time although we will notify you in writing of any changes.