



## DISCIPLINARY PROCEDURE

### 1. PURPOSE AND SCOPE

This procedure is designed to help and encourage all employees of Ashington Town Council to achieve and maintain high standards of conduct whilst at work or representing the council. Disciplinary action may be taken for misconduct outside of work as well as in the workplace. The aim is to ensure consistent and fair treatment for all.

This procedure does not apply to terminations for reasons of redundancy, poor performance, or retirement.

This procedure is prepared in accordance with the ACAS Code of Practice, March 2015.

This procedure does not form part of an employees' contract of employment, and changes will be made to the procedure in line with the law and best practice, as needed.

### 2. PRINCIPLES

- a) No disciplinary action will be taken against an employee until the case has been fully investigated.
- b) At every stage in the procedure the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made.
- c) At all formal stages the employee will have the right to be accompanied by a trade union representative or work colleague during the disciplinary interview. *Further information about the right to be accompanied is included at section 3.7.*
- d) No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty of dismissal without notice or payment in lieu of notice may be applied.
- e) An employee will have the right to appeal against any disciplinary penalty imposed and will have a right to submit a written statement if they disagree with the outcome.
- f) The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.
- g) Any written records will be kept confidential and retained in accordance with data protection law.

### 3. THE PROCEDURE FOR MISCONDUCT and GROSS MISCONDUCT

#### ***3.1.1 The following list provides examples of misconduct which will normally give rise to formal disciplinary action:***

- Unauthorised absence from work
- Persistent short-term and/or frequent absences from work without a medical reason
- Lateness for work or poor time keeping
- Inappropriate standard of dress
- Minor breaches of Health and Safety or other rules or procedures
- Failure to perform your job to the standard expected or in line with your job description/objectives
- Time wasting
- Disruptive behaviour
- Misuse of the council's facilities (e.g. telephones, computers, email, or the internet)
- Refusal to carry out reasonable requests or instructions
- Smoking in unauthorised areas

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- Failure to follow an agreed council Procedure

This list is not exhaustive, and offences of a similar nature will result in disciplinary action being instigated.

### ***3.1.2 The following list provides examples of offences which are normally regarded as gross misconduct:***

- Theft, fraud, deliberate falsification of records, or other acts of dishonesty
- Fighting, assault on another person
- Deliberate damage to property of the council, its workers, or members
- Gross incompetence in the conduct of work
- Gross negligence which results in the council or employees being put at risk.
- Being under the influence of illegal drugs or excessive alcohol
- Acts of incitement towards or actual acts of discrimination, harassment or victimisation including on the grounds of sex, race, colour, ethnic origin, disability, sexual orientation, age, religion or belief
- Serious acts of insubordination
- Serious breach of duty to keep information of the council, its service providers and its clients confidential
- Unauthorised entry to computer records
- Serious breach of the council's Policies
- Any action, whether committed on or off the premises, that is likely to or does bring the council into disrepute
- Serious negligence which causes or might causes significant loss, damage, or injury
- Accepting bribes or incentive payments from suppliers
- Unauthorised use of Council monies
- Working with an external agency to provide information which would be detrimental to and cause commercial risk to the council.

This list is not exhaustive and other offences of a similar gravity will result in disciplinary action being instigated at Gross Misconduct level which carries a potential penalty of dismissal. Gross Misconduct is generally any conduct which places extreme pressure on the mutual trust which exists in an employment relationship.

### **3.2 INFORMAL ACTION**

Minor misconduct will be dealt with informally usually in a confidential one-to-one meeting between the employee and line manager. In the case of the Executive Officer being the individual against whom there is a complaint or allegation the matter should be handled discreetly by members of the Staffing (or similar) committee and involve an informal meeting initially.

However, where the matter is more serious or informal action has not brought about the necessary improvement the following procedure will be used:

### **3.3 FORMAL ACTION**

#### ***3.3.1 Level of Warning***

The level of warning you may receive for misconduct/gross misconduct will depend on how serious the council considers the alleged actions to be and your previous conduct in all the

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circumstances. In the event of alleged gross misconduct the formal process may commence at Stage 4 –see 3.4 below.

### **3.3.2 Disciplinary Letters**

If there is a concern about an employee's conduct or behaviour then a letter will be given to the employee advising them of the allegation(s) and reasons why this is unacceptable. The letter should invite the employee to attend a meeting at which the alleged misconduct will be discussed and will inform the employee of their right to be accompanied to the meeting. The letter will specify at which stage the disciplinary procedure is being invoked (see 4 stages below) and if invoked at Stage 4 for Gross Misconduct the letter will warn that a potential outcome could be dismissal. The time, date and venue of the meeting will also be advised. Any documents to be produced at the meeting will also be provided.

### **3.3.3 Disciplinary Meetings**

The time and location of a disciplinary meeting should be agreed with the employee, and it should be held in a private location with no interruptions. This will normally be without undue delay but allowing the employee to prepare their case e.g. within 5 days of the letter being sent, where practically possible. At the meeting the manager (or in the case of the Executive Officer being disciplined, the Chair of the hearing panel) will state the complaint against the employee and go through the evidence which has been gathered. The employee will also be allowed to ask questions, present evidence, and call witnesses if advance notice has been given that they will do so. If the employee is unable to attend the meeting due to unforeseeable reasons out of their control (e.g. illness), or the person they have advised would accompany them, then the council will reasonably rearrange the meeting. However, if the employee fails to attend the meeting without good reason the meeting can be held in the employee's absence.

## **3.4 OUTCOMES AND PENALTIES**

### **Stage 1 - Oral Warning**

In the instance of a first complaint that conduct does not meet acceptable standards, the employee will normally be given a formal ORAL WARNING. He or she will be advised of;

- the reason for the warning,
- that it is the first stage of the disciplinary procedure,
- the improvement that is required and the timescales for achieving this improvement, together with a review date and any support available (where applicable) and his or her right of appeal.

A brief note of the oral warning will be kept but it will be spent after 6 months, subject to satisfactory conduct.

### **Stage 2 - Written Warning**

If the offence is a serious one, or if further to previous formal disciplinary action, a WRITTEN WARNING will be given to the employee by the Line Manager.

This will give details of the complaint, the improvement required and the timescale.

It will warn that action under Stage 3 will be considered if there is no satisfactory improvement and will advise of the right of appeal.

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A copy of this written warning will be kept on file. but it will be disregarded for disciplinary purposes after 12 months subject to satisfactory conduct.

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### **Stage 3 – Final Written Warning**

If there is still a failure to improve and conduct or performance is still unsatisfactory, or the misconduct is sufficiently serious, a FINAL WRITTEN WARNING will normally be given to the employee.

This will give details of the complaint, will warn that dismissal will result if there is no satisfactory improvement and will advise of the right of appeal.

A copy of this final written warning will be kept by the Line Manager (or in the case of the Town Executive Officer being disciplined by the Chair of the Hearing Panel) but it will be spent after 12 months (in exceptional cases the period may be longer) subject to satisfactory conduct.

### **Stage 4 – Dismissal or other sanctions**

If conduct is still unsatisfactory and the employee still fails to reach the prescribed standards, or where the Council reasonably believes Gross Misconduct has occurred, DISMISSAL may result.

Only the appropriately convened hearing panel can take the decision to dismiss an employee. The employee will be given a written statement of allegations against him/her, invited to a meeting, and then be notified in writing of the reasons for the decision taken at the hearing.

Penalties at this stage may include dismissal with notice or summary dismissal (i.e. without any notice), Final Written Warning with/without demotion, loss of pay or loss of seniority.

If dismissal is the outcome, the employee will be advised of the date on which employment will terminate. In all cases the employee has a right of appeal.

Very exceptionally, if an offence of Gross Misconduct is extremely serious an employee can be dismissed immediately without a meeting. In this situation a letter setting out reasons for dismissal would be sent to the employee offering the opportunity for an appeal hearing.

## **3.5 SUSPENSION**

If you are accused of an act of gross misconduct, you may be suspended from work on full pay while the council investigates the alleged offence. Suspensions during investigations will be as brief as possible and kept under review. Suspensions are not disciplinary actions in themselves. Only the appropriately convened committee has the power to suspend.

Whilst suspended pending disciplinary investigation regular contact with a nominated person at the council will be maintained although access to premises, equipment or systems may be denied.

The Investigator who compiles evidence for the disciplinary hearing must play no part in the subsequent decision-making to ensure impartiality. Councils need to consider the implications of such arrangements on its hearing and appeal panel plans early on in the disciplinary process.

## **3.6 APPEALS**

The Appeals stage of the disciplinary process is part of the Code of Practice to which an employee has a right. It can be exercised after any of the stages of disciplinary action for Misconduct/Poor Performance or Gross Misconduct.

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An employee who wishes to appeal against a disciplinary decision should inform the Chair (or Chair of the relevant committee) within five working days, in writing and giving reasons for the appeal. An Appeal may be raised if:

- The employee thinks the finding or penalty is unfair
  - New evidence has come to light, but this will only be considered if there is a good reason it was not presented earlier
- The employee thinks that the procedure was not applied properly

Where possible the Appeal will be heard by a separate panel of elected members who have not been involved in the original disciplinary hearing, who will view the evidence with impartiality. A written response will be issued to an appeal.

The employee will have the right to be accompanied by a colleague or accredited Trade Union official or lay member at the appeal hearing.

The outcome of the appeal and reasons for it will be advised to the employee as soon as possible after the meeting and be confirmed in writing.

At the Appeal hearing any disciplinary penalty imposed will be reviewed but it cannot be increased. The decision taken at the Appeal hearing will be final.

### **3.7 THE RIGHT TO BE ACCOMPANIED**

Employees have a statutory right to be accompanied by a companion where the disciplinary meeting could result in:

- a formal warning being issued; or
- the taking of some other disciplinary action
- the confirmation of a warning or some other disciplinary action (appeal hearings)

The statutory right is to be accompanied by a fellow employee, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany an employee.

Employers must agree to an employee's request to be accompanied by any companion from one of these categories. Employees may also alter their choice of companion if they wish.

To exercise the statutory right to be accompanied employees must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. A request to be accompanied does not have to be in writing or within a certain timeframe. However, an employee should provide enough time for the employer to deal with the companion's attendance at the meeting. Employees should also consider how they make their request so that it is clearly understood, for instance by letting the employer know in advance the name of the companion where possible.

If an employee's chosen companion will not be available at the time proposed for the hearing by the employer, the employer must postpone the hearing to a time proposed by the employee provided that the alternative time is both reasonable and not more than five working days after the date originally proposed.

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The companion should be allowed to address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing. The companion does not, however, have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case.

### **3.8 HEARING PANELS**

The SLCC advise that councils establish hearing panels to hear disciplinary and grievance hearings on an annual basis so that if a dispute does arise in the workplace the elected members involved are already trained and briefed on their duties as a hearing or appeal panel member. In situations where individual members are implicated in the dispute or have undertaken an investigatory role then they will need to be substituted as panel members.

### **3.9 NOTE-TAKING**

It is highly recommended that a note-taker be provided to every meeting/hearing which arises as a result of a disciplinary process as Employment and Discrimination Tribunals are particularly keen to view contemporaneous notes of events which have led to an employment dispute. Councils will need to give this requirement careful consideration to respect employee confidentiality.

### **3.10 GRIEVANCES RAISED DURING DISCIPLINARIES**

In some circumstances when a disciplinary process has commenced an employee chooses to exercise their right to raise an internal grievance about the employment relationship with the council or individual Members.

The SLCC recommends, in line with ACAS advice, that disciplinary matters are placed on hold until grievances have been aired and actions towards a resolution have been progressed.

In exceptional circumstances it is pragmatic to deal with the two disputes concurrently but SLCC would advise caution and specialist advice should be sought if this arises.

### **3.11 CRIMINAL CHARGES OR CONVICTIONS**

If an employee is charged with or convicted of a criminal offence this does not automatically give rise to a disciplinary situation. Consideration needs to be given to how a charge or conviction may affect an employee's ability to undertake his or her job duties and their relationships with the employer, colleagues, subordinates or customers.

## **4. MONITORING AND REVIEW OF THIS POLICY**

The Executive Officer shall be responsible for reviewing this policy annually to ensure that it meets legal requirements and reflects best practice.

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