

GRIEVANCE AND DISCIPLINARY POLICY AND PROCEDURE

The Council recognises that individual employees or groups of employees may feel aggrieved about an aspect of their employment. Each employee has the right to raise this grievance and to expect that management will consider it and respond.

PURPOSE

The purpose of the accompanying procedure is to provide a framework for dealing promptly and fairly with such grievances. The aim is to resolve grievances as near as possible to their point of origin.

Matters to be dealt with under the Council's Grievance Procedure include all questions relating to the individual rights of employees in respect of their employment other than those:

- lodged outside of the time limits set out in the accompanying procedure unless with the agreement of the Town Clerk;
- which have already been considered in accordance with the procedure;
- arising from a disciplinary or capability process in which the employee is already involved and where there is an appeals procedure in place;
- in respect of issues over which the Council has no control e.g. external legislation;
- which are already the subject of a collective grievance or dispute.

The timescales shown in the accompanying procedure may be altered by mutual agreement.

PROCEDURE

Where the Employee is aggrieved about any matter relating to their employment, they should raise the matter informally with the Clerk (as line manager) or Chairman/vice chairman (if the Clerk) as soon as possible, and other than in exceptional circumstances, within 20 working days of the incident or event. However, employees will be permitted to raise, as part of a grievance, a series of directly related incidents having a cumulative effect.

Informal resolution

The Clerk (as line manager) or Chairman/vice chairman (if the Clerk) should consider and seek to resolve the grievance within 10 working days by meeting with the Employee to discuss. Should the Clerk (as line manager) or Chairman/vice chairman (if the Clerk) determine that further investigation is required, the case will be adjourned for a period not to exceed a further 10 working days during which time The Clerk (as line manager) or Chairman/vice chairman (if the Clerk) can carry out any necessary research, including, if appropriate, liaising with other parties.

Whether or not this proves possible The Clerk (as line manager) or Chairman/vice chairman (if the Clerk) should, in every case, inform the employee of their decision in writing within 5 working days and, if appropriate, any action taken.

The Employee may wish to seek the advice of a trade union representative or colleague prior to raising a grievance at this informal level.

If the employee is not satisfied with the result of the informal process, they can take the matter up with the Staffing working group in writing, stating the nature of the grievance. This should be done within 10 working days. A formal written response to the grievance should be issued within 5 working days.

It is not expected that other parties would attend the hearing. However, if it is determined by The Clerk (as line manager) or Chairman/vice chairman (if the Clerk) that their contributions would facilitate consideration of the grievance they will be asked to make themselves available.

A formal written response to the grievance should be issued within 5 working days of grievance hearing as appropriate.

An individual raising a formal grievance may be accompanied throughout the process by a trade union representative or colleague of their choice and reasonable preparation for the hearing will be allowed.

The timescales shown in the above procedure may be altered by mutual agreement.

DISCIPLINARY PROCEDURE

PURPOSE

This procedure is designed to help and encourage all employees to achieve and maintain acceptable standards of conduct and job performance. The aim is to ensure consistent and fair treatment for the individual.

In accordance with the Employment Rights Act 1996, Human Rights Act 1998 and the ACAS Code of Practice on Disciplinary Procedures this procedure sets out the framework for resolving issues relating to misconduct and unsatisfactory performance.

This procedure will apply to all employees unless it conflicts with contractual or statutory requirement, which will take precedence. It will be applied fairly, consistently and in accordance with the Equality Act 2010.

GENERAL PRINCIPLES

The procedure is not a substitute for good management practices and should only be invoked when initial attempts to improve conduct have been made following discussions between the employee and their manager. However, where there has been a serious first time breach of disciplinary rules or gross misconduct the formal procedure should be actioned immediately.

- No disciplinary action will be taken against an employee until the circumstances have been fully investigated.
- At every stage in the procedure the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made.
- The employee has the right to be represented at disciplinary hearings and appeals.
- In all instances of alleged misconduct, the employee will be given at least 5 working days' notice of the requirement to attend a hearing or appeal. Should the employee fail to attend without an acceptable reason, then the chairman of the hearing or appeal may proceed in the employee's absence.
- Any disciplinary action taken will depend on the nature of the offence, the past recorded behaviour of the employee concerned, the consequence to the council of the offence and any explanation presented by the employee.
- Employees' have the right to appeal against any disciplinary warnings and dismissal.

REPRESENTATION

Employees have the right to representation at hearings and appeals relating to any stage of the formal procedure. This can be a trade union representative, non-union employee representative or a work colleague.

Representatives have the right to address the hearing or appeal. They may also ask questions and present the employee's case. However, they have no right to answer questions on the employee's behalf.

INFORMAL PROCEDURE

Where a minor disciplinary issue arises, the chairman will normally consider the matter and will resolve it if they can without recourse to the formal procedure.

Allegations of more serious misconduct or where a previous warning has been given but the required improvement has not been made, should immediately be referred to the Staffing Working Party who will then be responsible for nominating an investigating officer.

The person who carries out an investigation should not participate in any subsequent decision to take action under the procedure. Likewise, the person hearing the case should not be involved in the investigation beforehand. It is important that respective roles are identified at an early stage so that those roles are not compromised. The investigating officer need not be the employee's supervisor or line manager although this would normally be the case.

Staffing Working Party may provide verbal or written warnings for minor misconduct. Only the Full Council has the right to suspend an employee

Informal procedure guidance

Where a minor breach of acceptable/ established standards of conduct occurs which does not justify formal disciplinary action, the line manager will advise the employee concerned of the conduct or standard expected in the future. In many cases this will provide sufficient encouragement for the employee not to commit further acts of misconduct.

The employee will be offered guidance, support and where appropriate additional training to achieve the necessary standards. Representation will not normally be appropriate. Managers should make a note of such informal advice and guidance and should set out in writing the required improvements and standards of conduct that are expected in the future. Records of informal advice/counselling should be kept on employee's personal files.

FORMAL PROCEDURE

Formal procedure will apply when:

- previous informal advice or warnings have proved ineffective;
- the allegation is of a serious nature;
- a number of minor allegations are made which taken together constitute a serious breach of discipline.

Suspension

In some circumstances the Council may consider suspension, with pay, pending further investigation or until the disciplinary hearing takes place. Suspension may be appropriate in cases potentially involving gross misconduct; relationships have broken down; there is a risk to the employer's property

or to other people. An employee should be advised that suspension in itself does not constitute disciplinary action.

An employee should be advised of the reasons for suspension. The period of suspension should not normally last for more than 20 working days, however where necessary this period can be extended.

The decision whether suspension is necessary can be reviewed at any time in the disciplinary process.

Investigation

Before any decision can be made about whether or not a disciplinary hearing is necessary, an investigation must take place. The Staffing Working Party should appoint an appropriate investigating officer, who could be an external adviser, who will report back with their findings and make recommendations as to whether a disciplinary hearing should be convened.

The responsibilities of the Investigating officer are to collect evidence by interviewing any relevant witnesses and gathering all documentation.

An Investigatory Interview should be held with the employee concerned giving 5 working days' written notice outlining the nature of the allegation. The purpose of the interview is to present the findings of the investigation to the employee and allow them to answer or shed light on the potential allegations to assist the investigating officer to decide if he or she should recommend a disciplinary hearing and/or whether any further investigation is needed.

For the benefit of the employee and the council any investigation must be concluded within a reasonable timescale. If there is a delay in completing the investigation it is the responsibility of the Investigating officer to regularly update the employee or their representatives on the progress of the investigation.

Once the Investigating officer has gathered all the relevant facts and reviewed the evidence, a report should be drafted to the Staffing Working Party recommending one of the following.

- take no further action and inform the employee accordingly
- advise the arrangement of counselling, training, extra supervision or written advice as appropriate
- arrange a disciplinary hearing

Arranging a Hearing

If, following the recommendations of the investigating officer, the Staffing Working Party concludes that a hearing is required then the employee should be given at least 5 working days' notice in writing. The letter should include a clear written statement of the allegation and should enclose any documentary evidence being relied upon and a reminder of the employee's right to be represented.

The investigating officer is responsible for presenting the case and making arrangements for any witnesses that he or she relies upon, to attend the meeting.

The employee is responsible for arranging any representation they choose to have and any witnesses that they may wish to call. Details of any witnesses the employee intends to call and a copy of all documents that the employee may wish to refer to at the hearing must be submitted to the Investigating officer at least 3 working days prior to the hearing.

Conducting a hearing

The panel for a hearing would normally comprise the Staffing Working Party and an independent HR representative to advise, as appropriate.

Objective of the hearing

- to hear the evidence in respect of the allegation, the employee's response and to decide whether or not the allegation is substantiated
- if the allegation is substantiated, determine the disciplinary sanction to be applied in light of the seriousness of the offence and having regard to previous relevant disciplinary history

Hearing procedure

- Introduction of panel members and their roles
- clarify the purpose of the hearing and state the allegation
- presentation of the case by the investigating officer with witnesses called as necessary
- questions by employee and/or their representative
- questions by the panel
- employee and/or their representative to state their case with witnesses called as necessary
- questions from investigating officer
- questions from panel
- investigating officer to sum up
- employee/representative to sum up
- panel adjourn to make their decision
- hearing reconvened and the employee/representative informed of the decision and, if necessary, their rights of appeal

Requests for an adjournment can be made at any stage and it is up to the chairman to decide whether or not a request should be granted.

The decision of the panel must be confirmed to the employee in writing within 5 working days. The letter should clearly set out:

- panel decision
- length of time that any warning will be active for
- expected improvement in conduct
- assistance that will be provided to achieve this
- employee's right to appeal

LEVELS OF DISCIPLINARY ACTION

In determining the appropriate disciplinary action, regard should be given to the employee's previous record, the gravity of the offence and any explanation given.

Although the procedure implies a sequential approach there may be certain circumstances where the matter needs to be considered immediately under Stages 2, 3 or 4 (below).

Stage 1 - Oral Warning

For a minor offence, a formal verbal warning (confirmed in writing) making it clear that further misconduct will render the employee liable to further disciplinary action including more severe consequences.

Stage 2 - First Written Warning

For a more serious offence or where a previous warning to the employee has not resulted in the required improvement to their conduct.

Stage 3 – Final Written Warning

For a sufficiently serious offence, which might warrant only one written warning but is insufficiently serious to justify dismissal, or where previous warnings have been ineffective.

Stage 4 – Dismissal with notice

For an act or acts of misconduct, other than gross misconduct, by an employee who is under a final written warning. The employee will be liable to dismissal with notice or pay in lieu of notice.

Dismissal without notice

In cases where gross misconduct is established the employee will be liable to summary dismissal, that is without notice or pay in lieu of notice.

LENGTH OF WARNINGS

Records of informal meetings and formal warnings will be kept on employee's personal files. An oral warning will be live for 6 months and written warnings live for 12 months from the date of the disciplinary hearing. Final written warnings will be live for 2 years.

THE RIGHT OF APPEAL

An employee has the right to appeal against disciplinary action resulting in a warning or their dismissal. Three members an Appeal Panel will hear the appeal, providing that they have had no previous involvement in the matter, assisted by an independent adviser.

Making an appeal

An employee who wishes to appeal must do so in writing to the chairman of the Staffing Working Party. This must be done within 10 working days of the disciplinary hearing informing them of the disciplinary action taken.

The appeal letter must set out the grounds for the appeal, normally under one of the following headings:

- the severity of the disciplinary action
- the findings of the Panel on a point of fact which is pertinent to the decision of the hearing
- a failure to adhere to the disciplinary procedure

Arranging an appeal

The date and time of the appeal will be organised by the chairman of the Staffing Working Party. It is the responsibility of each side to prepare themselves for the appeal including arranging for any witnesses to attend.

The chairman of the original panel and the employee or their representative will, where possible, agree papers for submission to the appeal 5 days prior to the hearing.

Conducting an appeal hearing

The objective is to review the decision of the disciplinary hearing and decide whether that action is warranted or not and, if the action is not warranted, to determine what action if any is appropriate.

In doing so the Appeal Panel will have regard to seriousness of the offence and any previous relevant disciplinary history

Appeal hearing procedure

- appellant puts their case including calling any witnesses
- the manager has the opportunity to ask questions of the appellant and witnesses
- the chairman of the previous hearing, who took the disciplinary action puts their case for having done so, which may include calling any witnesses
- the appellant has the opportunity to ask questions of the manager and witnesses
- the appeal hearing panel has the opportunity to ask questions of both parties and witnesses
- both parties have the opportunity to sum up should they wish to do so. No new information should be introduced at this stage and the appellant should have the opportunity to sum up last
- the appeal is adjourned to allow the appeal hearing panel to reach a decision
- the appeal is reconvened and both parties are informed of the decision
- appeal hearing panel writes to both parties informing them of their decision within 5 working days

The appeals hearing panel has the right to call its own witnesses should it consider this to be of assistance in making its decision.

TRADE UNION OFFICIALS

In normal circumstances no action will be taken against an officer of a recognised trade union until the matter has been discussed with a full-time officer of that union.

DISCIPLINARY RULES

Whitland Town Council will apply a test of reasonableness by considering whether a reasonable person would be aware that disciplinary action would result from a certain act or omission.

The following are examples of the types of conduct which are unacceptable and which may lead to disciplinary action. The list is not exhaustive and other behaviour not listed may lead to disciplinary action when necessary.

- Poor time-keeping/ attendance
- Unjustifiable absence from work
- Waste, loss or damage of Council property through failure to take due care
- Negligence or failure in performance of duty
- Being under the influence of alcohol or drugs

GROSS MISCONDUCT

Unacceptable conduct, which may be regarded as gross misconduct, is likely to lead to an employee's summary dismissal. This means dismissal without notice and occurs when the employment relationship between the Council and employee, and the trust which is inherent in that, is irrevocably broken.

The following list gives examples of matters likely to be regarded as gross misconduct and is not exhaustive:

- Refusing to follow reasonable management instructions
- Theft from the Council, its members, employees or the public
- Physical assault or verbal abuse
- Fraud or deliberate falsification of records
- Falsification of qualifications
- Serious negligence which causes unacceptable loss, injury or damage
- Serious acts of insubordination
- Serious breach of confidence
- Use of privileged information for personal gain
- Malicious damage to the Council's property
- Sexual misconduct at work
- Discrimination, victimisation or harassment
- Serious breaches of safety rules
- Serious incapability through alcohol or drugs
- Accessing or distributing pornography on the Council's IT facilities

TRAINING

Appropriate training will be given to any members who might be involved in disciplinary or appeals meetings to ensure they fulfil their responsibilities under this procedure.

This policy is cross-referenced to the following policies and procedures:

Job Description

Equal Opportunities Policy

Elected Members Code of Conduct

Dignity at Work and Bullying & Harassment Policy

Training and Development Policy