

HAWARDEN COMMUNITY COUNCIL

DISCIPLINARY PROCEDURE

Item 6

1. INTRODUCTION

This procedure is intended to ensure that all employees, irrespective of race gender and/or disability are treated fairly and consistently. Whilst the ultimate sanction of dismissal can be applied for continual misconduct (or for gross misconduct), it is also an intention of the procedure to bring the consequences of misconduct or poor performance to the attention of the employees concerned so that they can improve their conduct and avoid dismissal.

2. SCOPE

The following procedure applies to all employees within Hawarden Community Council.

3. PRINCIPLES

- 3.1 The primary objective of the Council's Disciplinary Procedure is to encourage employees to improve and correct unacceptable behaviour or conduct rather than simply punish employees.
- 3.2 At every stage in the procedure the employee will be advised of the nature of the complaint against him/her and will be given the opportunity to state his/her case before any decision is made.
- 3.3 At every stage during the disciplinary procedure, the employee will have the right to be accompanied by a representative, who could be an accredited trade union representative/official or a work colleague. The employee will be informed of this right in the letter requesting his/her attendance at meetings held under the procedure and again at the commencement of any meeting.

Whenever possible the date and time of any hearing should be mutually agreed by all parties, including the chosen representative.
- 3.4 No disciplinary action will be taken against an employee until the case has been fully investigated and the disciplinary action will be reasonable in the circumstances.
- 3.5 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty might be summary dismissal without notice and without payment in lieu of notice.

- 3.6 Employees will be provided with a written decision which will explain the disciplinary action being taken and set out the improvement or standard required.
- 3.7 An employee will have the right to appeal against any formal disciplinary penalty imposed.
- 3.8 As far as practicable, the aim is to deal with issues as thoroughly and promptly as possible.
- 3.9 Normally, no action under this procedure, including suspension will take place in respect of an officer who is an accredited representative of a trade union, and whose status has been notified to the authority in writing, until the circumstances of the case have been discussed with a full-time official of the trade union concerned.

4. INVESTIGATION

- 4.1 When a potential disciplinary matter arises, the Clerk & Financial Officer or Chair of the Council will arrange for an investigation to take place, including an investigatory interview with the employee(s) concerned. This should be done as quickly as possible in order to establish the facts before recollections and memories fade. Where feasible, the investigating officer responsible will be assisted by a representative from the Staff & General Purposes Committee or another person with appropriate experience of disciplinary investigations. Written notes of any meetings that take place will be made which will be used for possible reference later.
- 4.2 Having thoroughly investigated the facts, the investigating officer will be expected to come to a decision regarding the allegations and the facts and other matters established during the investigation. This could involve a recommendation that the matter be dropped entirely, that it be referred to an informal hearing or that it should be referred to a formal disciplinary hearing. In the latter situation, a report will be prepared summarising the information and evidence obtained and the conclusions and recommendations for further action under the Council's Disciplinary Procedure.
- 4.3 If the employee is accused of an act of gross misconduct, and it is felt inappropriate for the individual to remain at work because it might jeopardise the investigations or give concern for safe working practices etc., he/she will usually be suspended from work on normal pay, normally for no more than ten working days, whilst the alleged offence is investigated. The suspension will be kept under review. The provision for suspension is not, in itself, to be regarded as a disciplinary action and does not involve any prejudgment. (Whether the employee is suspended or not must not be taken as an indication that any misconduct will, or will not, be deemed to be gross misconduct.

5. INFORMAL ACTION

There will be occasions when employees' misconduct, breaches of rules or unsatisfactory performance will be regarded as minor. In such cases the Clerk & Financial Officer or Chairman of the Council will meet with the employee confidentially to outline where improvement is required. Such counselling may be confirmed in writing.

6. FORMAL DISCIPLINARY ACTION

- 6.1 Before any disciplinary hearing the employee will be provided with full information of the allegations including the report of the investigating officer, witness statements and all relevant evidence/documents in good time to enable him/her to consider this with his/her representative prior to the hearing. This should not be less than five working days. The employee will be advised of the right to be accompanied at the hearing.
- 6.2 Any information to be relied upon by the employee at the hearing should normally be disclosed to the Presiding Officer, (i.e. the senior person from the Council who is to chair the disciplinary hearing), no less than two working days before the hearing.
- 6.3 At the hearing the procedure will be that the investigating officer will present the results of the investigation before the employee and will present any witnesses. The employee will be entitled to ask questions of the investigating officer and the witnesses. The employee will then be able to present his/her own case either him/ herself or through his/her representative and call any further witnesses. The employee will be required to respond to questioning by the investigating officer and the Presiding Officer at the hearing. All information placed before the Presiding Officer will be put in the presence of the employee and, if it is necessary to adjourn the hearing and reconvene for further information, this same principle will apply. Full details are set out in the Annexe to Appendix A1.
- 6.4 The following section explains the different levels of disciplinary action, or sanctions, which may be taken against an employee.

7. LEVELS OF DISCIPLINARY ACTION

7.1 Stage 1 Warning - Verbal

This is the lowest form of disciplinary action under the disciplinary procedure. If conduct or performance does not meet acceptable standards the employee will normally be given a stage 1 warning.

This level of warning may be given by the Clerk & Financial Officer. It will be a verbal warning and will be noted on the employment record.

7.2 Stage 2 Warning - Written

Where an offence is serious, or if a further offence occurs (which need not necessarily be of the same nature) whilst a stage 1 warning is still in force, the employee will be given a stage 2 warning.

This level of warning may only be given by a formally designated member of the Staff & General Purposes Committee. It will be a written warning and will be noted on the employee's employment record.

7.3 Final Warning

This is the most severe level of warning that can be given under the disciplinary procedure. Such a warning may be issued in one of the following situations:

- (i) Whilst a stage 2 warning is in force, there is a failure to improve and conduct remains unsatisfactory;
- (ii) The misconduct is sufficiently serious, taking into account mitigating circumstances, to warrant only one formal warning, but insufficiently serious to justify dismissal (in effect both first and final warning). In these circumstances a final warning will normally be given to the employee; or
- (iii) The misconduct is found to amount to gross misconduct but where mitigating circumstances are present such that the Presiding Officer does not deem it appropriate to dismiss the employee summarily. (See also paragraph 7.7 below).

Only The Chair of the Council, on the authority of the full Council, may give this level of warning.

7.4 Dismissal

If, whilst a final warning is still in force, conduct or performance remains unsatisfactory and the employee still fails to reach the prescribed standards, this will normally result in dismissal.

This action may be taken only by the Chair of the Council on the authority of the full Council.

7.5 Gross Misconduct

An employee may be dismissed without the operation of the above warnings procedure if an offence is deemed to be gross misconduct.

If, on completion of the investigation and the subsequent disciplinary hearing the Presiding Officer is satisfied that the employee has

committed an act of gross misconduct, the result will normally be summary dismissal, without notice or any payment in lieu of notice.

This action may be taken only by the Chairman of the Council on the authority of the full Council.

7.6 Examples of Potential Gross Misconduct

The following list provides examples of offences, which are normally regarded as gross misconduct, although each case will be considered on its own particular merits and circumstances:

- Theft, fraud, deliberate falsification of records;
- Fighting, assault or threats of violence against another person;
- Deliberate and serious damage to Council property;
- Serious incapability through alcohol or being under the influence of illegal drugs, with regard to any specific policies in place;
- Serious negligence which causes unacceptable loss, damage or injury;
- Serious act of insubordination;
- Serious discrimination or harassment against another employee, customer or service user;
- Unauthorised entry to computer records;
- Deliberately accessing Internet sites containing offensive or obscene material
- Bringing the Council into serious disrepute;
- A serious breach of health and safety rules;
- Serious breach of the Official Code of Conduct for Local Authority Employees.
- Disclosure of confidential information that could potentially seriously prejudice the interests of the Council.

This list provides examples only and is not exhaustive. It is impossible to anticipate every situation where gross misconduct may occur or to prescribe that on every occasion one of the cases listed above occurs, it will be judged to be gross misconduct.

7.7 Other forms of disciplinary action as an alternative to dismissal

In the case of serious or repeated offences where it is decided that mitigating circumstances indicate that dismissal is not appropriate, it may be appropriate for additional disciplinary action to be taken in addition to a final written warning. Appropriate action may include demotion, suspension without pay for a period not exceeding 10 working days. The Clerk & Financial Officer or nominated members of the Staff & General Purposes Committee will have authority to impose such action.

7.8 Notification of the result of the Disciplinary Hearing

The results of all disciplinary hearings will be confirmed in writing to all parties, including any representative, stating the employee's right of appeal, giving:-

- The disciplinary action that has been taken (or not taken, as appropriate),
- The reason(s) why,
- The timescale within which improvement is required;
- The consequences if there is no satisfactory improvement or further misconduct occur.

8. TIME LIMITS FOR WARNINGS

8.1 Subject to satisfactory conduct and performance, the time periods that must elapse before warnings are regarded as 'spent' are as follows:

Stage 1 warning - six months

Stage 2 warning - one year

Final warning - one year

The time period of the warning commences from the date of issuing of the warning.

'Spent' warnings will not normally be used to determine the disciplinary action that will result from any future act of misconduct.

9. APPEALS

9.1 An employee who wishes to appeal against the formal disciplinary action taken under the Disciplinary Procedure must write to the Chair of the Council, to be received within five working days of receiving written confirmation of the disciplinary action, stating the reasons for the appeal, which may fall within one or more of the following categories:-

- (a) The disciplinary sanction imposed is considered excessive for the nature of the offence/ misconduct which took place or inconsistent with the treatment that has applied to other employees in similar circumstances;

- (b) Insufficient consideration was given by the Presiding Officer at the disciplinary hearing to the particular mitigating circumstances of the employee; or
- (c) The disciplinary hearing did not take into account or was not aware of significant items of information or evidence before reaching its decision.

9.2 Appeals will be dealt with under the Council's Disciplinary Appeals Procedure, as set out in Appendix A to the document. Any written information to be relied upon by either party should normally be disclosed to each other a minimum of 2 working days (Monday to Friday) before the hearing.

APPENDIX A1

DISCIPLINARY APPEALS

1. An employee who wishes to appeal against any formal disciplinary action must write with their reasons to the Chairman of the Council within five working days of receiving the written decision regarding their wish to appeal. Receipt of the appeal will be acknowledged within two working days.

STAGE 1

2. The appeal will be considered by a Panel of three members of the full Council not previously involved in the matter. The appeal hearing will take place at the earliest practicable opportunity, normally within 15 working days of the receipt of the appeal notification. The employee may be accompanied by an accredited trade union representative or a work colleague.

The Council will issue the decision regarding the outcome of the appeal in writing to the employee within five working days of the hearing, including reasons for the decision.

The procedure for Stage 1 Appeal hearings is attached as an annexe to this document.

**ANNEXE TO
APPENDIX A1**

PROCEDURE FOR DISCIPLINARY HEARING OR STAGE 1 APPEAL

- (a) The hearing will be heard by a Panel comprising three Members of the full Council not previously involved in the matter.

- (b) The investigating officer will put the case in the presence of the employee and his/her representative and may call witnesses.
- (c) The employee (or his/her representative) will have the opportunity to ask questions of the investigating officer and any witnesses who are called by that person.
- (d) The investigating officer will have the opportunity to re-examine witnesses.
- (e) The Panel may ask questions of the investigating officer and witnesses.
- (f) The employee (or his/her representative) will put his/her case in the presence of the investigating officer and may call witnesses.
- (g) The investigating officer will have the opportunity to ask questions of the employee and any witnesses.
- (h) The employee (or his/her representative) will have the opportunity to re-examine witnesses.
- (i) The Panel may ask questions of the employee and any witnesses.
- (j) Witnesses will only stay in the room whilst they are giving evidence or are being questioned. They will leave the room as soon as they have finished.
- (k) The investigating officer and the employee (or his/her representative) may sum up their cases if they so wish.
- (l) The investigating officer and the employee and his/her representative and witnesses will withdraw.
- (m) The Panel will consider the facts in private, only recalling the investigating officer and the employee to clarify points of uncertainty on evidence already given. If recall is necessary, both parties are to return notwithstanding that only one is concerned with the point giving rise to doubt.
- (n) The Panel will announce the decision to the parties orally or in writing as may be determined. An oral announcement will be confirmed in writing in five working days.

*Adopted
March 2014
S.G.P.*