

DISCIPLINARY POLICY & PROCEDURE

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**EAST CAMBRIDGESHIRE
DISTRICT COUNCIL**

DISCIPLINARY POLICY & PROCEDURE

CONTENTS

1	INTRODUCTION	3
2	PRINCIPLES	4
3	DEFINITIONS	5
3.1	Misconduct	5
3.2	Gross Misconduct	5-6
4	INVESTIGATION	7
5	SUSPENSION	8
6	INFORMAL PROCEDURE	9
7	FORMAL PROCEDURE	10
7.1	Notice to Attend a Disciplinary Hearing	10-11
7.2	Conducting the Disciplinary Hearing	11
7.3	Disciplinary Action	12
7.3.1	Stage 1: Recorded Oral Warning	12
7.3.2	Stage 2: First Written Warning	12
7.3.3	Stage 3: Final (or First and Final) Written Warning	12
7.3.4	Stage 4: Dismissal (with Notice of Pay in Lieu of Notice)	12-13
7.3.5	Stage 4: Dismissal (without Notice of Pay in Lieu of Notice)	13
7.4	Disciplinary Appeals	13-14
8	MISCELLANEOUS	15
8.1	Mediation	15
8.2	Accredited Representation of a Trade Union	15
8.3	Employees with a Disability	15
8.4	Criminal Charges or Convictions Not Related to Employment	15
8.5	CCTV	15
8.6	Notification to Professional Bodies	15
9	RECORDS	16
 <u>APPENDICES</u>		
1	Procedure to be Followed at Disciplinary Hearings	17
2	Procedure to be Followed at Disciplinary Appeal Hearings	18

1. INTRODUCTION

- 1.1 This policy and procedure is designed to help and encourage all employees to achieve and maintain standards of conduct. It applies to all staff employed by the Council (with the exception of the Head of Paid Service, Monitoring Officer and Chief Financial Officer where separate arrangements apply), and aims to ensure a fair and effective method of dealing with alleged breaches of standards and professional codes of conduct.
- 1.2 This procedure aims to provide a non discriminatory mechanism for dealing with disciplinary matters that arise and will be applied fairly and consistently to all staff employed by the Council in line with the Council's Single Equality Scheme.
- 1.3 As breaches of discipline vary in seriousness they do not require the same severity of action and the application of disciplinary rules is initially meant to be corrective rather than punitive. Normally discipline is effectively maintained by, for example, management advice, job training, informal reprimands and through observance by employees of proper standards of conduct and the rules and regulations of the Council. However, in certain circumstances, discipline may need to be reinforced by the application of the formal aspects of this procedure.
- 1.4 The procedure does not apply to probationary dismissals, redundancy dismissals or the non renewal of fixed term contracts on their expiry.

2. PRINCIPLES

2.1 In general the formal disciplinary procedure should only be initiated if previous advice, training or informal reprimands have been ineffective, or the offence is of a more serious nature. The Council's disciplinary procedure will take place under the following guidelines:

- Both employers and employees should raise and deal with issues promptly, timing is critical when dealing with disciplinary matters.
- No disciplinary action will be taken against an employee until the incident/case has been fully investigated by managers/supervisors.
- Where possible, different levels of management should be responsible for investigating the allegations and conducting the disciplinary hearing.
- Employees will be informed of the complaints made against them and where possible all relevant evidence before any hearing.
- The timing and location of meetings/hearings must be reasonable, and reasonable adjustments will be made to assist employees and others attending the hearing with a disability.
- Both employers and employees will have the opportunity to explain their case at a disciplinary hearing, and both parties should act in a consistent manner.
- Where appropriate, witnesses may be called.
- Under no circumstances will the recording of disciplinary proceedings be permitted, i.e. tape/video recorder etc. (see 7.2.2).
- Any disciplinary action taken will be appropriate to the individual case taking reasonableness and fairness into consideration. Accordingly, disciplinary action is not bound to start with a oral warning.
- No employee will be dismissed for a first breach of discipline, except in the case of gross misconduct when the penalty may be dismissal without notice or payment in lieu of notice.
- Employees will have the right of appeal against any decision taken under the formal procedure.
- A more senior manager will be responsible for conducting the appeal hearing, as far as it is reasonably practicable.
- Employees have the right to be accompanied at a disciplinary or appeal hearing by either a trade union representative or a colleague ("the companion"). The representative or colleague is able to put forward and sum up the employee's case, ask questions, confer with the employee during the hearing and respond on their behalf to any view expressed. The companion does not have the right to answer questions on the employee's behalf.
- In instances of alleged professional misconduct additional guidance may be sought from the relevant professional body.
- Issues of poor performance or sickness shall be managed under the Council's capability or attendance management procedures.

3. DEFINITIONS

3.1 Misconduct

Except in cases of gross misconduct, misconduct will not result in dismissal for a first offence. However, dismissal may occur if the employee has previous 'live' warnings on record. The following are examples of general disciplinary offences that are regarded as misconduct:

- Poor time keeping or unauthorised absences;
- Refusal to carry out a reasonable instruction;
- Negligence or abuse causing injury or damage to property;
- Neglect or unsatisfactory standards in performance of duties;
- Offensive or disorderly behaviour;
- Insubordination or using abusive language;
- Leaving the workplace without permission or due cause;
- Smoking in areas designated as non-smoking;
- Knowingly obstructing a disciplinary investigation.

Please note that in certain circumstances an expired warning does not have to be disregarded when an employer is considering dismissal. Whilst it must not be the decisive factor in the decision to dismiss, it may be one consideration to be borne in mind when judging the "reasonableness" of the decision.

3.2 Gross Misconduct

Gross misconduct is misconduct that is so serious that the Council is justified in no longer accepting the continued presence of the employee at the place of work. If gross misconduct is proven, the result will normally be summary dismissal without notice or payment in lieu of notice.

Examples of gross misconduct include:

- Theft or attempted theft;
- Deliberate damage to Council property;
- Fighting or being involved in acts of violence at work;
- Serious violation of health and safety rules, including wilful failure to wear suitable protective clothing/equipment when provided;
- Unauthorised use of the Council's property or equipment for personal use;
- Misuse of Council facilities including computer facilities (e.g. email and Internet);
- Criminal or other serious misconduct outside the workplace which reflects adversely upon the Council or on the employee's suitability for the post;
- Deliberate falsification of records;
- Discrimination on the grounds of gender, race, religion, disability, sexual orientation etc.;
- Serious bullying or harassment;
- Corruption or bribery;
- Serious negligence which causes unacceptable loss, damage or injury;
- Falsification of time sheets (including overtime and additional hours);
- Serious incapability through alcohol or being under the influence of illegal drugs;
- Covert recording of meetings and hearings;

- Serious act of insubordination;
- The discovery of a conviction not spent under the Rehabilitation of Offenders Act 1974, and which was knowingly not disclosed at the time of engagement. This does not include driving offences, unless driving is relevant to the Officer's duties.

The examples listed of offences which could constitute misconduct or gross misconduct are neither exclusive nor exhaustive, and each case will be determined on the individual facts.

4. INVESTIGATION

- 4.1 When a breach of the disciplinary rules is considered to have occurred, the employee's manager, or another member of management, will investigate it promptly and efficiently, taking statements of any witnesses where appropriate. It is most important that any alleged offence is fully investigated before any disciplinary action is considered.
- 4.2 The employee(s) who is the subject of allegations or concerns will also be interviewed as part of the management investigation. As this interview forms part of the investigation and is not a disciplinary hearing, it may be arranged without the employee's prior notice. Whilst it would not normally be necessary for an employee to be accompanied at this investigative stage, any request to be accompanied will not be unreasonably denied. In such circumstances, the interview will be adjourned to allow time for the employee to obtain a trade union representative or colleague.
- 4.3 The Council's HR and Facilities Services Manager or Senior HR Officer will attend all investigatory interviews to offer advice and to keep a written record of the interview for future reference if required.

5. SUSPENSION

- 5.1 In certain circumstances, consideration will be given to a period of suspension from duty. Such suspension will occur where, for example, the alleged offence could be considered to constitute gross misconduct, where relationships have broken down or where there are risks to the Council's property or responsibilities to other parties. In such circumstances, the Assistant Director (Support Services) or the HR and Facilities Services Manager may immediately suspend the employee from work on full pay while the investigation proceeds.
- 5.2 A suspension from duty with pay is a precautionary measure to facilitate a thorough investigation and is not a disciplinary sanction.
- 5.3 A decision to suspend will be confirmed in writing as soon as reasonably practicable, outlining the allegations and emphasising that it is primarily to enable the investigation to take place and it is not a disciplinary measure.
- 5.4 The period of suspension will be as short as possible, and will be kept under review by the Assistant Director (Support Services) or the HR and Facilities Services Manager.

6. INFORMAL PROCEDURE

- 6.1 Following the investigation, if the manager believes that misconduct did not occur, then no further action will be taken.
- 6.2 If, following the investigation, the manager considers the matter to be a minor infringement, they may find it appropriate to issue an informal warning or a management instruction to improve. It is important at this stage that the employee is properly briefed so that they understand what is expected of them.
- 6.3 This process is part of a manager's normal relationship with staff and there is no right of appeal against this informal action.

7. FORMAL PROCEDURE

7.1 Notice to Attend a Disciplinary Hearing

- 7.1.1 If on completion of the investigation, the investigating manager considers that a complaint of misconduct is justified, arrangements will be made by the HR department to convene a disciplinary hearing as soon as possible.
- 7.1.2 The employee will be informed of this in writing. This letter will:
- Inform the employee that there is to be a disciplinary hearing, setting out the date, time, location and any members of management who will be in attendance;
 - Outline the nature of the allegations;
 - Provide all relevant evidence (where possible);
 - Inform the employee if any witnesses will be in attendance;
 - Give the employee the opportunity to call any witnesses;
 - Allow the employee sufficient time to prepare for the hearing; and
 - Inform the employee of his/her right to be accompanied by a trade union representative or colleague.
- 7.1.3 Where circumstances dictate, a written management statement of case, with full supporting documentation will be issued either with or following confirmation of disciplinary proceedings. Normally this will be within a minimum of five working days' written notice of formal proceedings. Although this notification can be changed by mutual agreement. Sufficient notice must be given to enable the employee to prepare their own statement of case ready for presentation at the hearing. The employee is required to provide their statement of case with any documentation including witness statements which they intend to present at least five working days prior to the hearing. It will be the decision of the disciplining officer whether to accept documentation submitted late.
- 7.1.4 If the employee does wish to call witnesses to a disciplinary hearing, then they are required to arrange for their witness to attend the hearing and to ensure that permission has been obtained for the release of witnesses. The employee must inform the HR department of any witnesses they intend to call.
- 7.1.5 All parties involved in the hearing should make every effort to attend. If, for 'good cause', the employee is unable to attend the hearing it will be adjourned to a later date which the employee and his/her representative (if any) will be informed of. 'Good cause' will be agreed by the HR and Facilities Services Manager or Senior HR Officer. If the employee is unable to attend the rearranged hearing for good reason, it will normally proceed in his/her absence. If the employee was due to be accompanied, then there would be the opportunity for their representative to present the employee's case on his/her behalf. Any submission by the employee or their representative in writing will be considered.

- 7.1.6 Where the trade union representative or colleague cannot for good reason attend the hearing then the hearing will be re-arranged to another date/time that they, or another suitable representative, can attend.

7.2 Conducting the Disciplinary Hearing

- 7.2.1 The hearing will be conducted by the HR Representative* in attendance who will act in an advisory capacity and will ensure that the procedure is followed correctly and that any proposed disciplinary penalty is reasonable in the circumstances. *The HR Representative will be either the HR and Facilities Services Manager or the Senior HR Officer. The procedure to be followed at a disciplinary hearing can be found in Appendix 1.
- 7.2.2 As set out in 7.1.2, an employee has the right to bring a colleague or trade union representative along to the disciplinary hearing to take a note of the hearing if they feel this is necessary, however, under no circumstances will the recording of disciplinary proceedings be permitted, i.e. tape/video recorder etc. In the event that an employee is found to be covertly recording a disciplinary hearing, then this in itself may be treated as a disciplinary matter, particularly if the employee has already been refused permission to make a recording.
- 7.2.3 The manager hearing the case and making the disciplinary decision will be the senior manager to the investigating manager. When the investigating manager is the Chief Executive, the disciplinary decision will be taken by an Assistant Director who has not previously been involved in the case.
- 7.2.4 The manager who conducted the investigation will not be part of the decision-making process but will be asked to present the case and other relevant material. The case will start by explaining the complaint against the employee and then by going through the evidence which has been gathered.
- 7.2.5 On completion of the proceedings, the relevant manager will announce the decision and the disciplinary action, if any, to be taken. The decision will take account of the employee's disciplinary and general record, length of service, decision reached in previous similar cases, any explanation put forward and therefore whether any intended disciplinary action is reasonable under the circumstances. The relevant manager will also give an explanation for that action and will explain the employee's right of appeal under the procedure. This will be followed up in writing within five working days.
- 7.2.6 If necessary, a second HR representative may be present at the hearing to take notes.

Note: In the absence of the relevant manager, it is expected that another senior member of management will take their place.

7.3 Disciplinary Action

7.3.1 Stage 1: Recorded Oral Warning

In matters of minor misconduct, an oral warning may be appropriate. A letter confirming the outcome of the hearing leading to the oral warning will be kept on the employee's personal file for up to six months. The record will be destroyed after this time subject to satisfactory conduct. In instances where follow-up action is required by the manager, for example, further training, this will be confirmed in writing to the employee. The warning will be confirmed in writing, within five working days of the hearing. The letter will include:

- A clear explanation of the findings;
- Action required to meet standards with timescales;
- Agreed support that will be given (if applicable);
- The potential consequences of further misconduct; and
- Details of how to appeal.

7.3.2 Stage 2: First Written Warning

For a more serious offence, or for a lesser offence where a recorded oral warning has been given and remains 'live' for previous misconduct of the same or similar nature, a first written warning will be given. The warning will be confirmed in writing, within five working days of the hearing and should include the details indicated in 7.3.1. A copy of the letter will be kept on the employee's HR file for 12 months. The record will be destroyed after this time subject to satisfactory conduct.

7.3.3 Stage 3: Final (or First and Final) Written Warning

A final written warning may be given where there has been further misconduct. It may also be issued where the nature of the offence is such that it is deemed appropriate to exclude all previous stages of the disciplinary procedure. The letter should be sent within five working days of the hearing and should include the details indicated in 7.3.1. The employee must be informed that further similar misconduct may lead to the termination of their contract of employment. A record of this warning will remain on the employee's file for 2 years. The record will be destroyed after this time subject to satisfactory conduct.

7.3.4 Stage 4: Dismissal (with Notice or pay in lieu of notice)

For an act or acts of further misconduct, other than gross misconduct, by an employee who is under a final written warning given in accordance with 7.3.3, the employee will be liable to dismissal with notice or pay in lieu of notice. Only the Chief Executive and Assistant Directors have the authority to dismiss an employee under these procedures. The employee must be given written reasons for the termination of employment within five working days. The letter must include:

- Date that employment is deemed to have ceased and a clear indication of notice periods, as defined in the employee's contract;
- Details of payment of outstanding monies;
- An instruction to return any Council property e.g. uniform, keys, etc; and

- How to appeal against the decision, time limits for lodging an appeal, and the person who will hear the appeal.

7.3.5 Stage 4: Dismissal (without Notice or pay in lieu of notice)

Summary dismissal (without Notice or pay in lieu of notice) will only be used in exceptional circumstances and where investigation has established gross misconduct. Examples of gross misconduct can be found in Section 3.2. It is not an exhaustive list. Only the Chief Executive and Assistant Directors have the authority to dismiss an employee under these procedures. The employee must be given written reasons for the termination of employment within five working days. The letter must include the details indicated in 7.3.4.

Whilst summary dismissal may be appropriate in cases of gross misconduct, it is not automatic and other levels of action may be considered more appropriate.

- 7.3.6 Please note that in certain circumstances an expired warning does not have to be disregarded when an employer is considering dismissal. Whilst it must not be the decisive factor in the decision to dismiss, it may be one consideration to be borne in mind when judging the "reasonableness" of the decision.**

7.4 Disciplinary Appeals

- 7.4.1 All employees have the right of appeal against any formal disciplinary action.

- 7.4.2 An employee who wishes to appeal against any disciplinary action must do so by writing to the HR Representative who conducted their disciplinary hearing, within five working days of the date of the disciplinary notification. The written notice of appeal must make clear as to whether the employee is appealing against the finding and/or the level of disciplinary action.

Any appeal will be considered as follows:

Stage 1: Recorded Oral Warning The disciplining officer's line manager

Stage 2: First Written Warning The disciplining officer's line manager

Stage 3: Final (or First and Final
Written Warning Chief Executive or Assistant Director
(depending on who heard the case)

Stage 4: Dismissal (with or
without notice) Chief Executive or Assistant Director
(depending on who heard the case)

Note:

- a) If the Chief Executive is the disciplining officer under Stage 1, 2 or 3, then the appeal will be made directly to an Assistant Director who has not previously been involved in the case;**

- b) If the Chief Executive is the disciplining officer under Stage 4 and has made the decision to dismiss, then the appeal will be made directly to a Member Sub-Committee constituted from three Members of the Council's Regulatory and Support Services Committee who will make a final recommendation to the full Regulatory and Support Services Committee.**

- 7.4.3 The procedure for conducting an appeal is described at Appendix 2. The decision taken at the appeal will be final.
- 7.4.4 If the appeal is upheld, any disciplinary action taken will be withdrawn.
- 7.4.5 Where an appeal is against a dismissal decision (with Notice or pay in lieu of notice), then the period of notice will begin from the date of the original decision to dismiss.
- 7.4.6 If summary dismissal (without notice) has been determined, no liability to pay the employee for the period between that decision and the date of the appeal will arise. However, if the appeal is upheld, the employee will be re-instated to ensure no loss of service or pay.

8. MISCELLANEOUS

8.1 Mediation

In certain cases, i.e. where informal action has not resolved an issue and before formal procedures are initiated, consideration should be given to the involvement of third parties in the resolution of disputes, such as mediators. This would not be appropriate in all cases and would have to be agreed by both parties and undertaken within given time limits. The mediator does not need to be someone from outside of the Council, but should be someone who has been trained in mediation and has not been previously involved in the dispute.

8.2 Accredited Representation of a Trade Union

If it is necessary to instigate disciplinary procedures against a trade union representative a full-time official of the Trade Union concerned will be consulted before any action is taken.

8.3 Employees with a Disability

When a disabled employee is involved in a disciplinary issue, the Council will make any 'reasonable adjustments' under the Equality Act 2010 to any provisions, criteria or practices associated with following this procedure which may affect the employee.

8.4 Criminal Charges or Convictions not related to Employment

If an employee is charged with, or convicted of, a criminal offence not related to work, this is not in itself reason for disciplinary action. The facts of the case will be established and whether the matter is serious enough to warrant starting the disciplinary procedure. The main consideration should be whether the offence, or alleged offence, is one that makes the employee unsuitable for their type of work. Similarly, an employee will not be dismissed solely because they are absent from work as a result of being remanded in custody.

8.5 CCTV

CCTV is in operation at the Council but to prevent and detect crime, not to monitor the Council's workforce. However, images of employees may be used in cases/incidents where the Council suspects or has witnessed something that cannot be ignored, such as criminal activity, gross misconduct, or behaviour which puts others at risk.

8.6 Notification to Professional Bodies

Where applicable, the Council will report to the appropriate statutory/professional body any serious act of misconduct following advice from the appropriate professional lead.

9. RECORDS

- 9.1 Records will be kept detailing the nature of any breach of disciplinary rules, the employee's defence or mitigation, the action taken and the reasons for it, whether an appeal was lodged, its outcome and the subsequent developments. These records will be kept confidential and retained in accordance with the disciplinary procedures and Data Protection Act, which requires the release of certain data to individuals on their request.
- 9.2 Copies of any meeting records will be given to the individual concerned although in certain circumstances, some information may be withheld, for example to protect a witness.

PROCEDURE TO BE FOLLOWED AT DISCIPLINARY HEARINGS

- (1) The HR Representative* will introduce all parties present and explain the procedure to be followed during the hearing. If the employee is not accompanied by a trade union representative or colleague, the HR Representative will check that he/she is aware of their right to be, and whether or not he/she is happy to proceed without representation.
- (2) The Council's investigating manager will present their case by explaining the complaint against the employee and going through the evidence which has been gathered as part of the investigation. If applicable, the investigating manager will call any witnesses at this time to present their evidence.
- (3) The employee or his/her representative has the opportunity to ask questions of the investigating manager and/or witnesses.
- (4) The Manager hearing the case and/or the HR Representative has the opportunity to ask questions of the investigating manager and/or witnesses.
- (5) The employee or his/her representative will present their case in response to the allegations. If applicable, the employee will call any witnesses at this time to present their evidence.
- (6) The Council's investigating manager has the opportunity to ask questions of the employee and/or their representative or witnesses.
- (7) The Manager hearing the case and/or the HR Representative has the opportunity to ask questions of the employee and/or their representative or witnesses.
- (8) Both sides will be given the opportunity to sum up, if they wish, with the Council's investigating manager first.
- (9) The Council's investigating manager, the employee and his/her representative will withdraw whilst the Manager hearing the case considers all of the evidence. The HR Representative will be present to offer advice/guidance.
- (10) The Manager hearing the case may recall both parties to clarify points. Even if the point of clarity only concerns one party, both parties will be asked to return.
- (11) If possible, the Manager hearing the case will give the decision at the time by reconvening the hearing but, if further consideration is necessary, the decision will be given within five working days.
- (12) Written confirmation of the oral decision will be given within five working days and the employee will be informed of their right of appeal.

Notes:

- a) The HR Representative present will be either the HR and Facilities Services Manager or the Senior HR Officer.
- b) The investigating manager, the employee or his/her representative may request an adjournment at any time. Any adjournment will normally be for a stated period.

PROCEDURE TO BE FOLLOWED AT DISCIPLINARY APPEAL HEARINGS

- (1) The Chairman* will introduce all parties present and explain the procedure to be followed. If the employee is not accompanied by a trade union or colleague, the Chairman will check that he/she is aware of their right to be, and whether or not he/she is happy to proceed without representation.
- (2) The Council's representative will put forward and explain the management's case, go through the evidence that has been gathered, and call witnesses (if necessary).
- (3) The appellant or his/her representative has the opportunity to ask questions of the Council's representative and/or witnesses.
- (4) The Chairman/Committee has the opportunity to ask questions of the Council's representative and/or witnesses.
- (5) The appellant or his/her representative puts forward his/her case, answering allegations, introducing witnesses and presenting evidence.
- (6) The Council's representative has the opportunity to ask questions of the appellant and/or his/her representative and/or witnesses.
- (7) The Chairman/Committee has the opportunity to ask questions of the appellant and/or his/her representative and/or witnesses.
- (8) Both sides will be given the opportunity to sum up, if they wish, with the Council's representative first.
- (9) The Council's representative, the appellant and his/her representative will withdraw whilst the Chairman/Committee consider the case. The HR and Facilities Services Manager or Senior HR Officer will be present to offer advice/guidance.
- (10) The Chairman may recall both parties to clarify points. Even if the point of clarity only concerns one party, both parties will be asked to return.
- (11) If possible, the Chairman will give the decision at the time by reconvening the hearing but, if further consideration is necessary, the decision will be given within five working days.
- (12) Written confirmation of the oral decision will be given within five working days.
- (13) The decision of the appeal hearing is final. The employee has no further internal right of appeal but may (subject to qualifying conditions), be able to take the issue to an Employment Tribunal. This will be made clear to the employee.

Notes:

- a) Chairman refers to the manager hearing the appeal or Chairman of the Committee.
- b) The Council's Representative will be the manager who made the decision to discipline at the disciplinary hearing.
- c) Either party may request an adjournment at any time. Any adjournment will normally be for a stated period.