

# DISCIPLINARY POLICY AND PROCEDURE

## Purpose

Disciplinary rules and procedures are necessary so that employees know what is expected of them in terms of the standards required, the conduct expected in carrying out their duties, and the likely consequences of failing to meet those standards. Hinckley and Bosworth Borough Council's procedures including the Employee Code of Conduct set out the expected standards of conduct at work.

This disciplinary policy provides a framework to ensure that these standards are met by all employees and sets out a fair and consistent procedure when dealing with any alleged misconduct.

This policy and procedure will be subject to periodic review and amendments following consultation with the recognised trade unions.

## Scope

This policy applies to all employees except for those covered by Chief Officer or Chief Executives Conditions of Service. Separate arrangements covering employees on these conditions of service are available from Human Resources.

## Principles

- Procedures will be used to help and encourage employees to improve rather than just a way of imposing a punishment. Consultation at all stages with Human Resources is an essential part of this procedure.
- The council's commitment to equality of opportunity will be observed during the operation of this policy and procedure.
- Line managers should aim to deal with any disciplinary issues as effectively and swiftly as possible.
- No disciplinary action will be taken against an employee before the allegation has been fully investigated and a disciplinary hearing has been held. The employee will be advised in writing of the nature of the allegation and the arrangements for the disciplinary hearing.
- Employees will be given the opportunity to state their case and for this to be considered before any decision is made.
- Employees will have the right to be accompanied by a trade union representative or a work colleague during any investigation interviews, disciplinary hearings, or subsequent appeal hearings.
- The council will make reasonable adjustments for disabled employees. This might mean allowing someone else to attend, for example a support worker or someone with knowledge of the disability and its effects.

- An employee will not be dismissed for a first disciplinary offence unless it is a case of gross misconduct. Only managers at Head of Service and above can dismiss.
- Employees will have the opportunity to appeal against any formal disciplinary sanction issued.
- All stages of the procedure will be treated as confidential.
- Disciplinary action will normally relate to behaviour and conduct at work but may relate to behaviour and conduct outside work where this has a direct bearing on an employee's suitability for employment or the council's reputation. Each case will be considered on its own merits.
- Shortfalls in performance will be dealt with using the council's Capability Policy and Procedure.

## **Suspension**

Where gross misconduct is alleged (i.e. conduct of such a serious nature as to warrant dismissal without notice) then the employee may be suspended on full pay whilst an investigation of the alleged offence takes place. Managers may also consider the transfer of an employee to other duties if deemed appropriate and following a risk assessment.

Suspension is not a disciplinary penalty and does not in itself imply any presumption of guilt on the part of the employee. Suspension should only be considered in cases of gross misconduct or when:

- The employee has been arrested or been charged with a serious criminal offence which potentially conflicts with their position.
- There is a clear concern that the employee or others may be placed at risk by the employee remaining in the workplace.
- It is considered that the employee may seek to influence witnesses or the conduct of the investigation.

Following discussions with Human Resources, if the manager believes that the allegation is so serious that it warrants a suspension, this should be approved by a Head of Service or above.

The employee should be notified setting out the reasons and terms of the suspension as soon as possible. Periods of suspension will be kept as short as possible, and employees will be provided with support throughout the suspension. The case will be reviewed at fortnightly intervals by the manager or, where this is not appropriate, by a nominated manager.

## **Disciplinary Procedure**

### **Examples of misconduct**

Matters that the council views as amounting to disciplinary offences include, but are not limited to:

- persistent poor timekeeping
- unauthorised absence
- minor damage to the council's property
- failure to observe the council's policies and procedures
- abusive behaviour
- refusal to follow reasonable instructions
- dishonesty
- smoking in non-designated areas of the council's premises
- bribery offences under the Bribery Act 2010

## **Informal Stage**

- 1.1 In cases of misconduct, the manager should make initial enquiries about the incident or allegation. This will normally involve a discussion with the employee concerned to find out if there is a simple explanation.
- 1.2 On the basis of the discussion the line manager may decide:
  - That following the initial enquiries, no further action is necessary as the incident or allegation is unsubstantiated.
  - That they are satisfied that they have investigated the incident or allegation sufficiently and that the matter should be dealt with on an informal basis rather than formal disciplinary action. The employee should be advised of the standards which are expected and any remedial action which is required. Although an informal warning will not form part of the disciplinary procedure, it will be recorded by the manager.
  - That further investigation is required and the incident or allegation may warrant formal disciplinary action. The matter would then be referred to the formal stage of the disciplinary policy.

## **Formal Stage**

### **2. Investigation**

- 2.1 No formal disciplinary action will be taken until the matter has been fully investigated and only if the matter is considered serious, will a formal disciplinary hearing be held.
- 2.2 An investigation will be necessary to establish the facts so that the allegation is dealt with consistently and fairly. This should be dealt with as swiftly as possible and the whole process should, in most cases, be completed within 2 months.
- 2.3 The employee will be given the opportunity of attending a formal investigatory interview to put forward their version of events and will have the right to be accompanied by a trade union representative or work colleague.
- 2.4 Investigations may be conducted by the line manager, or another manager appointed by Human Resources. The investigating manager should handle the matter promptly and gather all the relevant facts before memories fade. Statements should be obtained from any witnesses at the earliest opportunity and witnesses

should be given an opportunity to review and agree and sign off any revisions, as this will be required as part of formal evidence.

- 2.5 If the employee is already being investigated as part of the grievance procedure, the disciplinary process will not begin until the grievance has been completed.
- 2.6 Once the investigating manager has completed the investigation, a report will be drafted which will recommend one of the following options:
  - Formal action
  - Informal action or
  - No further action

### **3. Preparation for Disciplinary Hearing**

- 3.1 After completing the investigation and formal action is recommended by the investigation officer, the employee will be required to attend a disciplinary hearing.
- 3.2 In the event of a disciplinary hearing taking place the council will:
  - give the employee a minimum of 5 working days' advance notice of the date of the hearing.
  - advise the employee of the allegations and purpose of the hearing and that it will be conducted in accordance with the disciplinary procedure.
  - explain the employee's right to be accompanied at the hearing by a trade union representative or work colleague.
  - provide the employee all relevant information and evidence (which include statements taken from any fellow employees or other persons that the council intends to rely upon against the employee). This will be issued no less than 5 working days in advance of the hearing.
- 3.3 Where the employee is unable to attend a disciplinary hearing and provides a good reason for failing to attend, the hearing will be rearranged to another day. The council will give a minimum of 5 working days' notice of the rearranged hearing. If the employee is unable to attend the rearranged hearing, this will take place in the employee's absence unless there are special mitigating circumstances that have been given prior to the hearing. The employee's trade union representative or work colleague may attend in such circumstances and may present the employee's case. The employee may also make written submissions in this situation.
- 3.4 Where the trade union representative or work colleague is unavailable on the day scheduled for the meeting, it will be rescheduled, provided that the employee proposes an alternative time within 5 working days of the date originally scheduled.

### **4. The Disciplinary hearing**

- 4.1 The disciplinary hearing will be conducted by the employee's manager (if the investigating manager is the employee's line manager, then the senior manager will conduct the hearing) together with a representative from Human Resources (the panel).

- 4.2 Any member of management responsible for the investigation of the alleged disciplinary offence(s) will not be a member of the panel, although such managers may present any supporting facts and evidence at the disciplinary hearing.
- 4.3 The employee will be given a full explanation of the case against them and be informed of the content of any statements provided by witnesses.
- 4.4 The employee will be able to call witnesses. They will be permitted to set out their case and respond to the allegations. The employee will be given an opportunity to ask questions, present evidence and call relevant witnesses. They will also be given the opportunity to ask questions about any information provided by witnesses. If the council intends to call relevant witnesses, it will give the employee advance notice of this. The employee must also give advance notice to the panel if they intend to call relevant witnesses.
- 4.5 The panel may adjourn the disciplinary hearing if there is a requirement to gather further information or to conduct further investigations. The employee will be informed of the likely timescale of any such adjournment.
- 4.6 If further information is gathered, the employee will be allowed a reasonable time period, together with their trade union representative or work colleague, to consider the new information prior to the reconvening of the disciplinary hearing.
- 4.7 Once all relevant facts have been presented, the disciplinary manager will summarise the facts and an adjournment will take place, to allow the consideration of all the evidence and decide on any relevant action.
- 4.8 The disciplinary manager will consider each case on its own merits, however before deciding on any disciplinary sanction, consideration will be given to the following:
  - The seriousness of the offence.
  - Any guidance provided by the disciplinary procedure.
  - Actions taken in similar past cases at the council.
  - The individual's employment record.
  - Any mitigating circumstances (or substantial extenuating circumstances in cases of gross misconduct).
  - Whether the proposed penalty is reasonable in the circumstances.
- 4.9 After the conclusion of the disciplinary hearing and adjournment, the disciplinary manager will convey the decision of the panel to the employee and will inform the employee what disciplinary action, if any, is to be taken. The decision will be confirmed in writing (within 5 working days of the hearing). The employee will be notified of their right of appeal and this procedure.
- 4.10 Only managers at Head of Service or above can dismiss.

## **5. Disciplinary action**

- 5.1 Where, following a disciplinary hearing, the disciplinary manager establishes that the employee has committed a disciplinary offence, the following disciplinary action may be taken:

## **No case**

There may be instances where the disciplinary manager may decide that there is no case to answer (no finding on the disciplinary charges or the findings are so insignificant) and in those circumstances the case will be dismissed without any further action against the employee.

## **First Written Warning**

In the case of a first offence, or if further offences have occurred following an informal warning, the employee will, following a disciplinary hearing, be given a first written warning. A letter confirming the warning will be issued including confirmation of any improvement required and the consequences should the required standard not be met. A record of this will be kept on file for a period of 6 months from the date of the hearing.

## **Final Written Warning**

In the case of a more serious offence, or if a further offence occurs within the timeframe of a first written warning, the employee may be given a final written warning. A letter confirming the warning will be issued including confirmation of the improvement required and the consequences of their future conduct not meeting the required standards. A record of this will be kept on file for a period of 12 months from the date of the disciplinary hearing but a longer period may be stated in exceptional cases.

## **Dismissal**

In cases where there remains a failure to improve or where there is a further act of misconduct, other than gross misconduct, an employee will be liable to dismissal with notice or pay in lieu of notice.

In cases of gross misconduct, the employee will be dismissed without notice.

## **Action Short of Dismissal**

Where appropriate, the disciplinary manager may consider an alternative action to dismissal. This may include transfer to the same, similar or different job elsewhere in the council, or demotion with no pay protection. A penalty of Action Short of Dismissal will always be accompanied by a Final Written Warning. If the employee chooses not to accept the alternative penalty offered, they will be dismissed.

## **5.2 Communicating the Decision**

All decisions will be verbally communicated at the hearing following an adjournment (unless a written decision has been agreed by both parties). In all circumstances, a letter confirming the decision will be sent within 5 working days of the disciplinary hearing. The letter will state the reason for the decision, confirm the sanction awarded and advise the employee of their right of appeal.

## **6. Appeal**

- 6.1 An employee has the right to appeal against any disciplinary sanction issued to them. The appeal will be heard by a more senior manager who has not been involved in the decision to issue the disciplinary sanction to the employee.
- 6.2 The employee must provide written notice of any appeal within 5 working days of being informed in writing of the disciplinary sanction being issued to them. The notice of appeal should be sent to Human Resources.

When lodging an appeal, the employee should state:

- the grounds of appeal; and
  - whether they are appealing against the finding that they have committed the alleged act or acts of misconduct, or whether they are appealing against the level of disciplinary sanction imposed.
- 6.3 The employee has the right to be accompanied to the appeal hearing by a work colleague or a trade union representative.

### **The Appeal Hearing**

- 6.4 The senior manager conducting the hearing will explain the purpose of the hearing and how it will be conducted. The manager will ask the appellant to present their case in the first instance and why they are appealing. The senior manager may ask further questions. The senior manager will also ask management to present their case.
- 6.5 The senior manager, after hearing the appeal supported by Human Resources, must decide based on both sets of representations together with any subsequent facts that may have come to light, whether to uphold the disciplinary sanction or not.
- 6.6 The senior manager conducting the appeal hearing will convey their decision to the employee. This decision will be confirmed in writing within 5 working days of the hearing. The decision of the senior manager is final and there is no further right of appeal.

### **Appeal against Gross Misconduct (see below)**

- 6.7 Appeals against dismissal on the grounds of gross misconduct will be heard by the Appeal Panel, made up of nominated council members from the Ethical Governance and Personnel Committee. The panel will be advised by the HR Manager (if not already involved in the decision at the disciplinary hearing) or an external adviser. The decision of the Panel is final and there is no further right of appeal. Please contact Human Resources for more details.

## **7. Gross Misconduct**

- 7.1 Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the council. If it is alleged that an employee commits an act of gross misconduct, and this is proven, the council will summarily terminate the employee's contract of employment without notice or pay in lieu of notice.

7.2 Matters that the council views as amounting to gross misconduct include (but are not limited to):

- Unauthorised removal, possession or theft of property
- Fraud, theft or deliberate falsification of records
- Acts of violence
- Malicious damage
- Discrimination and / or harassment or bullying against any employee or member of the public on grounds of gender, marital status, age, race, nationality, disability, sexuality or religious belief
- Making mischievous unfounded allegations of misconduct, harassment, bullying or discrimination about a fellow employee
- Unauthorised use of the council's equipment, material or name.
- Unauthorised disclosure or use of confidential information.
- Acceptance of bribes or other types of corruption.
- Conviction of a criminal offence which affects the employee's ability to do his/her job, or which has serious implications concerning the propriety of them carrying on their job – this may include action for domestic violence and/or anti-social behaviour or offences.
- Conduct inside or outside the workplace which fundamentally breaches the working relationship of trust and confidence.
- Gross negligence in the performance of their duties
- Unauthorised or unlawful use of personal data in contravention of the Data Protection Act 1998.
- Bringing the council into serious disrepute.
- Serious infringement of Health & Safety rules and procedures
- Insubordination
- Breach of the council's ICT Acceptable Usage Policy
- Causing loss, damage or injury through serious negligence
- Breach of the council's Officer Code of Conduct (examples of gross misconduct are set out within the code)
- Serious breaches of the council's Constitution, especially Financial Procedural Rules and ICT policies
- Offences against children or vulnerable adults
- Serious incapability at work due to the misuse by alcohol or drugs (see our Drugs and Alcohol Policy)

7.3 The above list is neither exclusive nor exhaustive but illustrates the type of conduct that the council normally treats as gross misconduct and there may be other offences of a similar gravity, which will also normally constitute gross misconduct.

## **8. Other considerations**

### **8.1 Overlapping grievance and disciplinary cases**

Where an employee raises a grievance whilst undergoing a disciplinary process, dependent upon the circumstances, the grievance may be considered as part of the disciplinary process or both the disciplinary and grievance processes may run concurrently. In exceptional circumstances the disciplinary process may be suspended to allow the grievance to be dealt with separately. Please refer to Human Resources for further guidance and support.



## **8.2 Disciplinary Action against a Trade Union Official**

Although the same disciplinary standards apply to their conduct as employees, no disciplinary action shall be taken against a Trade Union Representative until the circumstances of the case have been discussed with the HR Manager and a full time official of the Trade Union concerned.

## **8.3 Sickness during the disciplinary process**

Being certified as sick does not necessarily prevent an employee participating and assisting with any investigations or attending a disciplinary hearing. However, in such circumstances, the employee's line manager should seek medical advice to ascertain if the employee is well enough to be interviewed or attend any subsequent disciplinary hearing. The employee must be fully aware of the allegations and given every opportunity to respond. If necessary, an interview may be offered at the employee's home, or alternative suitable venue or the employee can be offered the opportunity to submit a written statement.

Being under investigation can be very stressful, so it's important that employers consider the wellbeing and mental health of their employees. Looking out for employees' wellbeing and offering support can help prevent sickness absence, mental health issues arising or existing mental health issues getting worse.

## **8.4 Anti-Fraud**

If the Anti-Fraud Policy applies, the Section 151 Officer may appoint internal audit (or another person/body) to assist in investigations. Full disclosure of the methods used, and the evidence obtained in these circumstances will be provided.

## **8.5 Criminal Offences**

If the allegation appears to involve criminal activity, the line manager will take advice from HR, and the councils Monitoring Officer, to determine whether the matter should be referred to the Police.

The subsequent investigation will be to consider whether the employee may have committed the alleged offence and not to determine if they are guilty of a criminal act. The council is not required to await the outcome of any criminal proceedings before taking any disciplinary action however in some circumstances it may not be possible to undertake an internal investigation if there are criminal investigations pending. Advice from HR is essential when investigating such allegations as each case may need to be considered on its own merits.

Where an employee is convicted of a criminal offence the council will consider if the offence is one that makes the employee unsuitable for their type of work or unacceptable to other employees, partners, or clients of the organisation, and if so, whether there is suitable alternative work available. Following this consideration, the employer may initiate the disciplinary process.

## **8.6 Surveillance**

Any investigation requiring monitoring or surveillance will be in accordance with the Workplace Surveillance Policy.