



## **Disciplinary Policy and Procedure**

**February 2019**

### **1 Introduction**

- 1.1 This policy is taken from NALC Legal Topic Note 22 (February 2016). The policy is based on and complies with the ACAS Code of Practice. It also takes account of the ACAS guide on discipline and grievances. The policy is designed to help Council employees improve unsatisfactory conduct and performance in their job. Wherever possible, the Council will try to resolve its concerns about employees' behaviour informally, without starting the formal procedure set out below.
- 1.2 The policy will be applied fairly, consistently and in accordance with the Equality Act 2010.
- 1.3 This policy confirms:
  - The Council will fully investigate the facts of each case
  - The Council recognises that misconduct and unsatisfactory work performance are different issues. The disciplinary policy will also apply to work performance issues to ensure that all alleged instances of employees' underperformance are dealt with fairly and in a way that is consistent with required standards. However, the disciplinary policy will only be used when performance management proves ineffective. For more information see the ACAS publication 'How to manage performance'.
  - Employees will be informed in writing about the nature of the complaint against them and given the opportunity to state their case
  - Employees may be accompanied or represented by a workplace colleague, a trade union representative or a trade union official at any disciplinary, investigatory or appeal meeting. The companion is permitted to address such meetings, to put the employee's case and confer with the employee. The companion cannot answer questions put to the employee, address the meeting against the employee's wishes or prevent the employee from explaining their case
  - The Council will give employees reasonable notice of any meetings in this procedure. The employee must make all reasonable efforts to attend. Failure to attend any meeting may result in it going ahead and a decision being taken. An employee who does not attend a meeting will be given the opportunity to be represented and to make written submission
  - If the employee's companion is not available for the proposed date of the meeting, the employee can request a postponement and can propose an alternative date that is within 5 working days of the original meeting date
  - Any changes to specified time limits in the Council's procedure must be agreed by the employee and the Council
  - Information about an employee's disciplinary matter will be restricted to those involved in the disciplinary process. A record of the reason for disciplinary action and the action taken

by the Council is confidential to the employee. The employee's disciplinary records will be held by the Council in accordance with the Data Protection Act 2018

- Recordings of the proceedings at any stage of the disciplinary procedure are prohibited, unless agreed as a reasonable adjustment that takes account of an employee's medical condition
- Employees have the right to appeal against any disciplinary action. The appeal decision is final
- If an employee who is already subject to the Council's disciplinary procedure, raises a grievance, the grievance will normally be heard after the completion of the disciplinary procedure
- Disciplinary action taken by the Council can include an oral warning, written warning, final written warning or dismissal
- Except for gross misconduct when an employee may be dismissed without notice, the Council will not dismiss an employee on the first occasion that it decides there has been misconduct
- If an employee is suspended following allegations of misconduct, it will be on full pay and only for such time as is necessary. Suspension is not a disciplinary sanction. The Council will write to the employee to confirm any period of suspension and the reasons for it
- The Council may consider mediation at any stage of the disciplinary procedure where appropriate (for example where there have been communication breakdowns or allegations of bullying or harassment). Mediation is a dispute resolution process that requires the Council's and the employee's consent.

## **2. Definitions and Examples**

### **2.1 Misconduct**

Misconduct is employee behaviour that can lead to the employer taking disciplinary action. The following list contains some examples of misconduct:

- Unauthorised absence
- Poor timekeeping
- Misuse of the Council's resources and facilities including telephone, email and internet
- Inappropriate behaviour
- Refusal to follow reasonable instructions
- Breach of health and safety rules.

### **2.2 Gross misconduct**

Gross misconduct is misconduct that is so serious that it is likely to lead to dismissal without notice. The following list contains some examples of gross misconduct:

- Bullying, discrimination and harassment
- Incapacity at work because of alcohol or drugs
- Violent behaviour
- Fraud or theft
- Gross negligence
- Gross insubordination
- Serious breaches of health and safety rules
- Serious and deliberate damage to property
- Use of the internet or email to access pornographic, obscene or offensive material
- Disclosure of confidential information

### 2.3 Unsatisfactory work performance

The following list contains some examples of unsatisfactory work performance:

- Inadequate application of office procedures
- Inadequate IT skills
- Unsatisfactory management of staff
- Unsatisfactory communication skills

## 3 Disciplinary Investigation

3.1 The Council's Personnel subcommittee will appoint an investigator who will be responsible for undertaking the investigation – a fact-finding exercise to collect all relevant information. The investigator will be independent and will normally be a councillor. If the Personnel subcommittee considers that there are no councillors who are independent (for example, because they all have direct involvement in the allegations about the employee), it will appoint someone from outside the Council. The investigator will be appointed as soon as possible after the allegations have been made. The Personnel subcommittee will inform the Investigator of the terms of reference of the investigation. The terms of reference should deal with the following:

- What the investigation is required to examine
- Whether a recommendation is required
- How the findings should be presented. For example, an investigator will often be required to present the findings in the form of a report
- Who the findings should be reported to and who to contact for further direction if unexpected issues arise or advice is needed

3.2 The investigator will be asked to submit a report within 20 working days of appointment. In cases of alleged unsatisfactory performance or of allegations of minor misconduct, the appointment of an investigator may not be necessary and the Council may decide to commence disciplinary proceedings at the next stage (see section 4).

3.3 The Personnel subcommittee will first notify the employee in writing of the alleged misconduct and ask them to attend a meeting with the investigator. The employee will be given at least 5 working days' notice of the meeting with the investigator so that they have reasonable time to prepare for it. The letter will explain the investigatory process and that the meeting is part of that process. The employee should be provided with a copy of the Council's disciplinary procedure. The Council will also inform the employee that when they meet with the investigator, they will have the opportunity to comment on the allegations of misconduct.

3.4 Employees may be accompanied or represented by a workplace colleague, a trade union representative or a trade union official at any investigatory meeting.

3.5 If there are other persons (e.g. employees, councillors, members of the public or the Council's contractors) who can provide relevant information, the investigator should try to obtain it from them in advance of the meeting with the employee.

3.6 The investigator has no authority to take disciplinary action; their role is to establish the facts of the case as quickly as possible and prepare their report which will contain their recommendations and the findings on which they were based; that:

- The employee has no case to answer and there should be no further action under the Council's disciplinary procedure
  - The matter is not serious enough to justify further use of the disciplinary procedure and can be dealt with informally or
  - The employee has a case to answer and there should be action under the Council's disciplinary procedure.
- 3.7 The investigator will submit the report to the Personnel subcommittee who will decide whether further action will be taken.
- 3.8 If the Council decides that it will not take disciplinary action, it may consider whether mediation would be appropriate in the circumstances.

#### **4 The Disciplinary Meeting**

- 4.1 If the Personnel subcommittee decides that there is a case to answer, it will appoint a panel of 3 councillors. The panel will appoint a Chair from one of its members. The investigator shall not sit on the panel. No councillor with direct involvement in the matter, or who is a member of the Appeals subcommittee shall be appointed to the panel.
- 4.2 The employee will be invited, in writing, to attend a disciplinary meeting. The letter will confirm:
- The name of its Chair and other 2 members
  - Details of the alleged misconduct, its possible consequences and the employee's statutory right to be accompanied at the meeting
  - A copy of the investigation report, all the supporting evidence and a copy of the Council's disciplinary procedure
  - The time and place for the meeting. The employee will be given reasonable notice of the hearing (at least 15 working days) so that they have sufficient time to prepare
  - That witnesses may attend on the employee's and the Council's behalf and that both parties should inform each other of their witnesses' names at least 5 working days before the meeting
  - That the employee and the Council will provide each other with all supporting evidence at least 5 working days before the meeting. If witnesses are not attending the meeting, witness statements will be submitted to the other side at least 5 working days before the hearing
  - That the employee may be accompanied by a companion – a workplace colleague, a trade union representative or a trade union official.
- 4.3 The disciplinary meeting will be conducted as follows:
- The Chair will introduce the members of the panel to the employee
  - The investigator will present the findings of the investigations report
  - The Chair will set out the Council's case and present supporting evidence (including any witnesses)
  - The employee (or the companion) will set out their case and present evidence (including any witnesses)
  - Any member of the panel and the employee (or the companion) may question the investigator and any witness
  - The employee (or the companion) will have the opportunity to sum up their case

- The Chair will provide the employee with the panel's decision, with reasons, in writing, within 5 working days of the meeting. The Chair will also notify the employee of the right to appeal the decision
- The disciplinary meeting may be adjourned to allow matters that were raised during the meeting to be investigated by the panel.

## 5. Disciplinary Action

If the panel decides that there should be disciplinary action, it may be any of the following:

### 5.1 Verbal warning

A verbal warning is issued for most first instances of minor misconduct. The Council will notify the employee:

- Of the reason for the warning, the improvement required (if appropriate) and the time period for improvement
- That further misconduct/failure to improve will result in more serious disciplinary action
- Of the right to appeal
- That a note confirming the verbal warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for 6 months.

### 5.2 Written warning

If there is a repetition of earlier misconduct which resulted in a verbal warning, or for different and more serious misconduct, the employee will normally be given a written warning. A written warning will set out:

- The reason for the written warning, the improvement required (if appropriate) and the time period for improvement
- That further misconduct/failure to improve will result in more serious disciplinary action up to and including dismissal
- Of the right to appeal
- That a note confirming the written warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for 18 months.

### 5.3 Dismissal

The Council may dismiss:

- For gross misconduct
- If there is no improvement within the specified time period in the conduct which has been the subject of a final written warning
- If another instance of misconduct has occurred and a final written warning has already been issued and remains in force.

5.4 The Council will consider very carefully a decision to dismiss. If an employee is dismissed, they will receive a written statement of the reasons for dismissal, the date on which the employment will end and details of the right of appeal.

5.5 If the panel decides not to take disciplinary action, no record of the matter will be retained on the employee's personnel file. Action imposed as a result of the disciplinary meeting will remain in force unless and until it is modified as a result of an appeal.

## **6. Appeal**

- 6.1 An employee who is the subject of disciplinary action will be notified of the right of appeal. Their written notice of appeal must be received by the Council within 5 working days of the employee receiving written notice of the disciplinary action and must specify the grounds for appeal.
- 6.2 The grounds for appeal include:
- A failure by the Council to follow its disciplinary policy
  - The panel's decision was not supported by the evidence
  - The disciplinary action was too severe in the circumstances of the case
  - New evidence has come to light since the disciplinary meeting.
- 6.3 The appeal will be heard by the Appeals subcommittee.
- 6.4 The employee will be notified, in writing, within 10 working days of receipt of the notice of appeal of the time, date and place of the appeal meeting. The employee will be advised that he/she may be accompanied by a companion – a workplace colleague, a trade union representative or a trade union official.
- 6.5 At the appeal meeting, the Chair will:
- Introduce the sub-committee members to the employee
  - Explain the purpose of the meeting, which is to hear the employee's reasons for appealing against the decision of the Personnel subcommittee
  - Explain the action that the Appeals subcommittee may take
- 6.6 The employee (or companion) will be asked to explain the grounds for appeal.
- 6.7 The Chair will inform the employee that they will receive the decision and the sub-committee's reasons, in writing, within 5 working days of the appeal hearing.
- 6.8 The Appeals sub-committee may decide to uphold the decision of the Personnel subcommittee, substitute a less serious sanction or decide that no disciplinary action is necessary. If it decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file.
- 6.9 If an appeal against dismissal is upheld, the employee will be paid in full for the period from the date of dismissal and continuity of service will be preserved.
- 6.10 The Appeals subcommittee's decision is final.

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