



## **GLOSSARY OF TERMS**

The Council	Old Woughton Parish Council
O.W.P.C	The employer

## **1. PURPOSE AND SCOPE**

This procedure is designed to help and encourage any council employee to achieve and maintain high standards of conduct whilst at work or representing the council. The aim is to ensure consistent and fair treatment for all. This procedure is prepared in accordance with the dismissal and dispute resolution procedures as set out in the Employment Act 2008 and the ACAS Code of Practice APR 2009

## **2. PRINCIPLES**

- a) No disciplinary action will be taken against the Employee until the case has been fully investigated.
- b) 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.
- c) At all formal stages the Employee will have the right to be accompanied by a work colleague or in the case where the employee is sole employee, a nominated Councillor or accredited trade union official during the disciplinary interview who can offer advice to the Employee.
- d) The Employee cannot be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty of dismissal without notice or payment in lieu of notice may be applied.
- e) The Employee will have the right to appeal against any disciplinary penalty imposed.
- f) The procedure may be implemented at any stage if the Employee's alleged misconduct warrants such action.

## **3. THE PROCEDURE FOR MISCONDUCT and GROSS MISCONDUCT**

**3.1.1** The following list provides examples of misconduct which will normally give rise to formal disciplinary action:

- Unauthorised absence from work
  - Persistent short-term and/or frequent absences from work without a medical reason
  - Lateness for work or poor time keeping
  - Inappropriate standard of dress
  - Minor breaches of Health and Safety or other written and adopted rules or procedures of the Council.
  - Failure to perform the employee's job to the standard expected or in line with their job description/objectives
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- Time wasting
  - Disruptive behaviour
  - Misuse of the council's facilities (e.g. telephones, computers, email or the internet)
  - Refusal to carry out reasonable requests or instructions
  - Smoking in unauthorised areas
  - Failure to follow an agreed council Procedure

This list is not exhaustive and offences of a similar nature will result in disciplinary action being instigated

**3.1.2** The following list provides examples of offences which are normally regarded as gross misconduct (defined as misconduct so serious that it strikes at the very root of the employer-employee relationship destroying the employer's trust and confidence in the employee):

- Theft, fraud, deliberate falsification of records, or other acts of dishonesty
- Fighting, assault on another person
- Deliberate damage to property of the council or members
- Deliberately tampering with a work computer, downloading pornographic material from the internet or circulating such material by email. Installing unauthorised software or viruses onto Council property.
- Gross incompetence in the conduct of work
- Gross negligence that results in the council being put at risk.
- Being under the influence of illegal drugs or excessive alcohol
- Acts of incitement towards or actual acts of discrimination, harassment or victimisation including on the grounds of sex, race, colour, ethnic origin, disability, sexual orientation, age, religion or belief
- Serious acts of insubordination
- Serious breach of duty to keep information of the council, its service providers and its clients confidential
- Any action, whether committed on or off the premises, that is likely to or does bring the council into disrepute
- Serious negligence which causes or might cause significant loss, damage or injury

- Accepting bribes or incentive payments
- Unauthorised use of Council funds
- Working with an external agency to provide information that would be detrimental to and cause commercial risk to the council.

This list is not exhaustive and other offences of a similar gravity will result in disciplinary action being instigated at Gross Misconduct level which carries a potential penalty of dismissal. Gross Misconduct is generally any conduct which places extreme pressure on the mutual trust which exists in an employment relationship.

### **3.2 INFORMAL ACTION**

Minor misconduct will be dealt with informally, usually in a confidential one-to-one meeting between the Employee and Chairman of the Council. However, where the matter is more serious or informal action has not brought about the necessary improvement the following procedure will be used:

### **3.3 FORMAL ACTION**

**3.3.1** The level of warning an employee may receive for misconduct/gross misconduct will depend on how serious the council considers the alleged actions to be and any previous conduct in all the circumstances. In the event of alleged gross misconduct the formal process may commence at Stage 4 –see 3.4 below.

**3.3.2 Disciplinary Letters** If there is a concern about a Employee’s conduct or behaviour then a letter (contents of which has been decided by all Councillors at a public excluded GM or EGM of the Council) will be given to the Employee advising him/her of the allegation(s) and reasons why this is unacceptable. The letter should invite the Employee to attend a meeting at which the alleged misconduct will be discussed and will inform the Employee of their right to be accompanied to the meeting. The letter will specify at which stage the disciplinary procedure is being invoked (see 4 stages below) and if invoked at Stage 4 for Gross Misconduct the letter will warn that a potential outcome could be dismissal. The time, date and venue of the meeting will also be advised. Any documents to be produced at the meeting will also be provided.

**3.3.3 Disciplinary Meetings** The time and location of a disciplinary meeting should be agreed with the Employee without undue delay, e.g. within 5 days of the letter being sent, where practically possible. The Employee should be allowed time to prepare their case. The meeting should be held in a private location with no interruptions. At the meeting the Chair of the hearing panel (representation of which is agreed at a general meeting or extra ordinary general meeting of the Council) will state the complaint against the Employee and go through the evidence that has been gathered. The Employee will also be allowed to ask questions, present evidence and call witnesses if advance notice has been given that they will do so. If the Employee is unable to attend the meeting due to unforeseeable reasons out of their control (e.g. illness) then the council will reasonably rearrange the meeting. However, if the Employee fails to attend the meeting without good reason the meeting can be held in the Employee’s absence.



### **3.4 OUTCOMES AND PENALTIES**

#### **Stage 1 - Oral Warning**

In the instance of a first complaint that conduct does not meet acceptable standards, the Employee will normally be given a formal ORAL WARNING. He or she will be advised of;

- the reason for the warning,
- that it is the first stage of the disciplinary procedure,
  
- the improvement that is required and the timescales for achieving this improvement,
- together with a review date and any support available (where applicable) and
- his or her right of appeal.

A brief note of the oral warning will be kept but it will be spent after 6 months, subject to satisfactory conduct.

#### **Stage 2 - Written Warning**

If the offence is a serious one, or if further to previous formal disciplinary action, a WRITTEN WARNING will be given to the Employee by the Chairman. This will give details of the complaint, the improvement required and the timescale. It will warn that action under Stage 3 will be considered if there is no satisfactory improvement and will advise of the right of appeal. A copy of this written warning will be kept on file but it will be disregarded for disciplinary purposes after 12 months subject to satisfactory conduct.

#### **Stage 3 – Final Written Warning**

If there is still a failure to improve and conduct or performance is still unsatisfactory, or the misconduct is sufficiently serious, a FINAL WRITTEN WARNING will normally be given to the Employee. This will give details of the complaint, will warn that dismissal will result if there is no satisfactory improvement and will advise of the right of appeal. A copy of this final written warning will be kept by the by the Chair of the Hearing Panel but it will be spent after 12 months (in exceptional cases the period may be longer) subject to satisfactory conduct.

#### **Stage 4 – Dismissal or other sanctions**

If conduct is still unsatisfactory and the Employee still fails to reach the prescribed standards, or where O.W.P.C. reasonably believes Gross Misconduct has occurred, DISMISSAL may result. Only the appropriately convened hearing panel can take the decision to dismiss an Employee. The Employee will be given a written statement of allegations against him/her, invited to a meeting and then be notified in writing of the reasons for the decision taken at the hearing. Penalties at this stage may include dismissal with notice or summary dismissal (i.e. without any notice), Final Written Warning with/without demotion, loss of pay or loss of seniority. If dismissal is the outcome, the Employee will be advised of the date on which employment will terminate. In all cases the Employee has a right of appeal. Very exceptionally, if an offence of Gross

Misconduct is extremely serious an Employee can be dismissed immediately without a meeting. In this situation a letter setting out reasons for dismissal would be sent to the Employee offering the opportunity for an appeal hearing.

### **3.5 SUSPENSION**

Councils need to consider the implications of such arrangements on its hearing and appeal panel plans early on in the disciplinary process.

If the Employee is accused of an act of gross misconduct (see table above), the appropriately convened committee has the power to suspend Employee on full pay while the council/committee investigates the alleged offence. Whilst suspended pending disciplinary investigation, the Employee is entitled to regular contact with a nominated person at the council although the convened committee charged with the investigation may deny access to premises, equipment or systems. The Investigator who compiles evidence for the disciplinary hearing must play no part in the subsequent decision-making to ensure impartiality.

### **3.6 APPEALS**

The Appeals stage of the disciplinary process is part of the Code of Practice to which a Employee has a right. It can be exercised after any of the stages of disciplinary action for Misconduct/Poor Performance or Gross Misconduct.

An Employee who wishes to appeal against a disciplinary decision should inform the Chair within five working days, in writing and giving reasons for the appeal. An Appeal may be raised if:

- The Employee thinks the finding or penalty is unfair
- New evidence has come to light
- The Employee thinks that the procedure was not applied properly

Where possible the Appeal will be heard by a separate panel of elected members who have not been involved in the original disciplinary hearing, who will view the evidence with impartiality. The Employee will have the right to be accompanied by a colleague or accredited Trade Union official or lay member at the appeal hearing.

The outcome of the appeal and reasons for it will be advised to the Employee as soon as possible after the meeting and be confirmed in writing. At the Appeal hearing any disciplinary penalty imposed will be reviewed but it cannot be increased. The decision taken at the Appeal hearing will be final.



### **3.7 THE RIGHT TO BE ACCOMPANIED**

At each formal stage of disciplinary interview an Employee has the right to be accompanied and can make a reasonable request for such a person to accompany them. An Employee can ask any other Employee or councillor or an appropriately accredited official employed by a trade union to accompany them, to give support and help them prepare for the disciplinary interview. This right is enshrined in the 1999 Employment Relations Act. As this is an internal process there is no provision to have any external person accompany or represent an Employee e.g. partner, parent, solicitor etc. The companion can address the hearing, put and sum up the Employee's case, respond on behalf of the worker to any views expressed at the meeting, confer with the Employee. The companion cannot however answer questions on the Employee's behalf or address the hearing if the Employee does not wish him/her to or prevent the Employee explaining their case.

### **3.8 HEARING PANELS**

The Council should establish a hearing panel to hear disciplinary and grievance hearings as and when the need arises.

### **3.9 NOTE-TAKING**

The Council must provide a note-taker at every meeting/hearing which arises as a result of a disciplinary process to record events, debates and discussions and the Employee may appoint a note taker. Each party in the dispute must agree that the notes are an accurate representation of the meeting/hearing. Any contemporaneous notes of events which have led to an employment dispute will be required at any stage of an appeal or if the case is taken by either party to a relevant Employment Tribunal. All notes taken remain confidential while the parties are involved in the process and the Council and Employee are reminded that careful consideration of this requirement is necessary to ensure both parties' confidentiality.

### **3.10 GRIEVANCES RAISED DURING DISCIPLINARIES**

In some circumstances when a disciplinary process has commenced an Employee can choose to exercise his/her right to raise an internal grievance about the employment relationship with the council or individual Members. In this instance the disciplinary matter will be placed on hold until grievances have been aired and actions towards a resolution have been progressed. If, due to exceptional circumstances, it is appropriate to deal with the two disputes concurrently, specialist advice should be sought.

### **3.11 CRIMINAL CHARGES OR CONVICTIONS**



If an Employee is charged with or convicted of a criminal offence this will automatically give rise to a disciplinary situation. At this point O.W.P.C will give consideration as to how a charge or conviction may affect an Employee's ability to undertake his/her job duties and their relationships with the employer, colleagues, subordinates or customers. Only if O.W.P.C deems that the Council has been brought into disrepute through the charge/conviction, will the employee then face disciplinary process.

REVIEW HISTORY

Version 1	Adopted	20/08/12
Version 2	Adopted:	09/03/15
Version 3	Adopted:	14/09/20