

THE COUNCIL'S AGREED DISCIPLINARY PROCEDURE

In implementing this procedure, Officers of Eastbourne Borough Council will ensure that our approach promotes and protects equality of opportunity in service delivery, at all times, in line with corporate policies and training.

DISCIPLINARY PROCEDURE

1. Introduction

1.1 Eastbourne Borough Council is committed to monitoring, reviewing and improving the quality of the service which is given to our customers, both external and internal. Where an employee's performance is not of an acceptable standard, it will be explained that his or her conduct is not acceptable and s/he will be given training, guidance and the opportunity to improve, as appropriate. If that improvement is not achieved, full consideration will be given to any mitigating circumstances and alternative courses of action prior to a decision to discipline or dismiss. (See Performance Management Commitment & Capability Procedure)

1.2 This procedure applies to all employees, except those:

- who have not completed their probationary service (see Head of Personnel's advice on probationary reviews).
- who are redundant as defined in the "Employment Protection (Consolidation) Act 1978";
- who are engaged on a temporary, seasonal, fixed term contract of employment of less than 52 weeks. (please see separate Disciplinary Procedure for Seasonal, Temporary & Casual Workers)

2. Investigation

Where a disciplinary matter arises, the employee's Manager will commission an investigation. At this point, the Manager will inform the Employee Relations Adviser of the situation for corporate management information purposes and will agree action as necessary.

The investigation will incorporate:

- Interview with the individual concerned, as appropriate.
- Interview with any witnesses, as appropriate.
- Gathering of related documentation and any other evidence relating to the potential disciplinary action.

3. Decision as to appropriate action

3.1 The Manager or Supervisor will then decide whether action is required.

3.2 If there is no case to answer or the matter is so trivial it may be better to overlook it, the matter should be dropped.

3.3 A second alternative open to the Manager is to give advice and arrange counselling.

3.4 In some cases misconduct may only require an informal reprimand. Informal reprimands stand totally outside this procedure. At any stage in the operation of this procedure, or as an alternative to its operation, a Manager may choose to give the employee an informal reprimand. If he or she does so the Manager must understand that such informal action stands completely outside this procedure. Nor can such an informal reprimand later be quoted as having the status of any kind of warning for the purposes of this procedure. It can, however, be used as evidence of clarification provided to an individual on the procedures or behaviours acceptable in the work context.

3.5 If the Manager concludes that the matter before him or her is attributable to a lack of skill or aptitude, or to health or any other physical or mental quality, then he or she is dealing with incapability not misconduct, and the use of the Disciplinary Procedure is not appropriate. However, this procedure should be used if a problem is attributable to a wilful disinclination by the employee to carry out his or her duties efficiently or effectively.

3.6 If the Manager concludes that formal disciplinary action must be taken, he or she must proceed as set out below.

4. Suspension

If the matter to be investigated, or having been investigated, is thought to involve serious misconduct, the employee may be immediately suspended from work on full basic pay while the investigation proceeds. The provision to suspend from duty should only be used in exceptional circumstances and only then on the specific instruction of a Director or in his absence, a senior manager designated to deputise. Any decision to suspend will be confirmed in writing as soon as reasonably practicable. The suspension will be a precautionary measure and will not indicate prejudice as to the outcome of any disciplinary hearing.

5. Action against Trade Union Officials

Where an alleged act of misconduct is believed to have been committed by an employee who is an accredited official of a recognised trade union, no action under the procedure, other than precautionary suspension when serious misconduct is being investigated, will be taken until the circumstances of the case have been discussed either with the UNISON Branch Secretary or with the Regional Officer of the Union as appropriate.

6. The Disciplinary Hearing

6.1 If on completion of the investigation, the Manager believes on reasonable grounds that the matter warrants consideration under this Procedure, the employee should then be called to a Disciplinary Hearing.

6.2 The Hearing must be arranged within 10 days of the incident in question. The objective should be to deal with disciplinary matters as speedily as possible.

6.2 The employee will be given at least 24 hours prior notice of the Hearing in writing. The letter must include:

- the time, date and place of the Hearing – which should be held on ‘neutral ground’, a separate location to that where the event(s) leading to the disciplinary hearing arose;
- the clearly stated grounds of management's complaint (these grounds must remain the substance of the Hearing);
- the employee's right to be represented by his or her trade union representative or friend.
- Copies of notes of investigation, witness statements produced during this investigation and any additional documentation uncovered relating to the case itself.

6.3 Generally, our practice is that written Statements from absent persons will not normally be admissible.

There is relevant case law and any Manager in this position is asked to consult the Employee Relations Adviser or Head of Personnel or designated deputy. The Manager conducting the Hearing should personally be sure of any facts to be used. Should the testimony of any individual be required, he/she should be present and may have his/her statements challenged on behalf of the employee.

6.4 At the Disciplinary Hearing, the facts of the case as disclosed through the investigation should be considered and the employee and/or his or her representative must be given the opportunity to give his or her version of the facts and to add any new facts.

6.5 Exceptionally, if it is not possible for management to make a decision immediately because further information is required, the Disciplinary Hearing can be adjourned. The reconvened meeting should concentrate on this new information and the employee should be given the opportunity to comment upon it. Any such new information should be provided to both parties prior to the reconvening of the Disciplinary Hearing, wherever possible.

6.6 In cases where a reasonable belief in the employee's alleged misconduct is established on the balance of probabilities, the ruling should be given in accordance with the procedure set out in Section 7.

7. Disciplinary Action - Formal Warnings

7.1 If, at the end of the Hearing, the Manager decides that the circumstances justify a formal warning, consideration should be given to the level of warning.

7.2 This procedure allows for action either in the circumstances of gross misconduct or for three warnings - first, second and final. These will normally operate on a sequential basis but the Manager may, in exercise of his/her discretion, issue a higher warning without having given any previous warnings where the circumstances of the case are sufficiently serious to warrant such action (See Paragraph 11 below.)

8. Stage 1 - FIRST WARNING

8.1 Offences other than alleged serious and gross misconduct will on the first occasion be dealt with at this stage.

8.2 A first warning shall remain in effect and on the employee's record for six months.

9. Stage 2 - SECOND WARNING

9.1 Further alleged misconduct, other than alleged serious and gross misconduct, committed within six months of a first warning, or instances of alleged more serious misconduct will be dealt with at this stage.

9.2 A second warning shall remain in effect and on the employee's record for 12 months.

10. Stage 3 - FINAL WARNING

10.1 This stage will apply in the circumstances of (i) alleged misconduct within twelve months of a second warning being issued; (ii) alleged serious misconduct where the circumstances of the case are serious enough to be dealt with in the first instance at this stage.

10.2 A final warning shall remain in effect and on the employee's record for 18 months.

11. Warnings not given in sequence

Action which would result in the issue of a higher warning thus "accelerating" the process of the Procedure shall be discussed with the Employee Relations Adviser or Head of Personnel or designated deputy before such action is taken. An employee in this position always has a right of appeal.

12. Giving a Warning

12.1 The decision of the manager must be communicated orally to the employee at the conclusion of the Disciplinary Hearing.

12.2 The decision should be confirmed in writing to the employee within three working days of the Hearing. A copy of any written confirmation should be passed to any Trade Union representative who has been involved.

12.3 The letter should formally state that at the Hearing the employee was warned that the consequence of further misconduct may lead to dismissal. If a warning has been given, the letter must include:

- the nature of the offence and a clear statement about the improvements required by management;
- the level of the warning given;
- the period during which the warning will remain in force;
- any consequent action that may be taken if further acts of misconduct are committed;
- reference to any special measures or arrangements (e.g. training) being provided to help the employee;
- the employee's right of appeal and how an appeal can be initiated;
- an invitation to discuss these matters further should the employee consider clarification to be helpful to future improvement.

13. Stage 4 - DISMISSAL

13.1 This stage may only apply in either of the following circumstances:

- (i) further alleged misconduct within eighteen months of a final warning being issued;
- (ii) alleged Gross Misconduct which will be dealt with in the first instance at this stage.

13.2 Gross misconduct is regarded as misconduct of such a nature that it represents an irrevocable breakdown of the contractual relationship between the employee and the Council and justifies management in no longer accepting the continued presence of the employee at the place of work. Potential examples of gross misconduct may include: theft of Council property, stealing from members of the staff or public, other offences of dishonesty, gross negligence, sexual misconduct at work, physical assault, deliberate damage to or misuse of the Council's property, * drunkenness or being under the influence of drugs at work, falsification of records or claims for personal gain. This list is neither exclusive nor exhaustive. Please consult the Employee Relations Adviser or Head of Personnel or designated deputy.

(*Please note that alcoholism or drug addiction are not automatic grounds for taking disciplinary action. Consult Personnel)

13.3 The Hearing shall be conducted by the Director, or exceptionally another senior manager designated to deputise, in consultation with the Employee Relations Adviser or Head of Personnel or designated deputy, who will attend.

13.4 Where the Director establishes, on the balance of probabilities, a reasonable belief in the employee's misconduct, the employee shall be dismissed. Where this dismissal is as a result of the employee's gross misconduct, the dismissal shall be without notice.

13.5 However, a Director may decide, after considering all the facts, that the alleged offence, although serious, does not warrant dismissal and may issue an appropriate warning (normally final). If a warning is given, then Paragraph 12 above will be followed.

13.6 The Director will inform the employee orally of his or her decision at the conclusion of the Hearing.

13.7 If the decision is to dismiss, then it will be confirmed in writing within three working days of the Hearing. The written confirmation must state the reasons for the dismissal and must inform the employee of his or her right of appeal to the Disciplinary Appeals Panel (see 15 below).

14. Appeals against action taken at Stages 1-3

14.1 An employee may appeal against the decision at any stage of the Procedure. Appeals at the First, Second and Third Stage will be heard by an officer who is senior to the officer who gave the warning and who has not been involved previously in the disciplinary procedure. Where the warning in question has been issued by the Director personally, the appeal will be heard and determined by another Director.

14.2 The appeal is to be made in writing and submitted within 10 working days of the employee receiving the disciplinary warning.

14.3 Within 10 working days of receipt of an appeal, the officer hearing the appeal shall hold a meeting with the employee and, if the employee so wishes, his or her trade union representative or friend.

14.4 The officer hearing the appeal will give his or her decision orally at the conclusion of the meeting. He or she may uphold or reject the appeal. Alternatively a different level of warning may be substituted. The decision will be confirmed in writing within 3 working days of the meeting.

14.5 If the appeal is upheld the warning will be removed from the employee's personal file. (The employee has a right to check that deletion.)

14.6 There is no further right of appeal against a warning.

15. Appeals against dismissal

15.1 Appeals against dismissal will be heard by the Council's Disciplinary Appeals Panel of 3 selected Members, none of whom should have a direct interest in the individual or their Department.

15.2 On receipt of an appeal against dismissal within ten working days of the date of issue of the letter of dismissal, the Director will notify the Employee Relations Adviser or Head of Personnel or designated deputy who will convene a meeting of the Disciplinary Appeals Panel within 10 working days.

15.3 The procedure to be followed at meetings of the Council's Disciplinary Appeals Panel is set out at the Appendix to this procedure.

15.4 The Panel may uphold or reject the appeal and the decision is to be given orally at the conclusion of the meeting and in writing to the employee and his or her representative within 3 working days.

15.5 If the appeal is allowed the employee will be reinstated in his or her employment on the original terms and conditions.

15.6 The Disciplinary Appeals Panel is the final level of appeal within the Borough Council.

16. Time Limits

The time limits referred to in this procedure may be varied by agreement with the Trade Union.

**(Update to the procedure to be agreed by Joint Staff Committee – 20
November 2002)**