

## **DISCIPLINARY PROCEDURE**

### **1.0 Introduction**

- 1.1 Eastbourne Borough Council is committed to ensuring all employees meet the required standards of conduct. Employees who don't meet the standards will have an impact on the service we provide.
- 1.2 The procedure provides a framework for managers to work with employees to achieve and maintain acceptable standards of conduct. The aim is to ensure consistent and fair treatment for all employees.
- 1.3 Minor cases of misconduct by an employee may be best dealt with informally. A quiet word is often all that is required to improve an employee's conduct, by advising the employee that there is an issue, and that a repetition could lead to formal disciplinary proceedings.

A manager carrying out an informal meeting to discuss minor misconduct should be careful that it does not turn into a formal meeting and should understand when the employee's right to be accompanied will apply.

- 1.4 The procedure does not apply to:
- matters of capability. Please refer to the Capability Procedure.
  - employees who have not completed their probationary service. Please refer to the Probationary Review Procedure.
- 1.5 This procedure is not contractual and the Council reserves the right to enter the process at any stage and amend the procedure where relevant to individual circumstances.

### **2.0 Principles**

- 2.1 This procedure follows the guidance recommended by the ACAS Code of Conduct.
- 2.2 Employees and managers are expected to be familiar with the standards of conduct that apply in the workplace including those detailed in Eastbourne Borough Council's Code of Conduct.
- 2.3 Managers will informally address minor misconduct before using the formal procedure.
- 2.4 Eastbourne Borough Council will not dismiss employees who breach

#### Version Control

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standards of conduct for the first time, except in cases of gross misconduct.

- 2.5 Eastbourne Borough Council will not take disciplinary action until the circumstances of a case have been investigated.
- 2.6 The Council is committed to ensuring that there is no unlawful discrimination and bias in the application of its procedures. Action taken under this procedure will therefore be monitored to ensure fairness.
- 2.7 To ensure fair treatment and, where appropriate, provision of support by Eastbourne Borough Council in the application of this procedure, employees should be invited to provide information about any equality or diversity issues which may be relevant.
- 2.8 There may be circumstances where conduct outside work may make an employee's continued employment untenable.
- 2.9 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, reasonable steps will be taken to discuss the circumstances of the case with the UNISON Branch Secretary or with the Regional Officer of the Union as appropriate prior to any formal disciplinary sanctions being applied.
- 2.10 Employees will be notified in advance of any formal disciplinary meeting and have the opportunity to be accompanied by a trade union representative or a nominated colleague from EBC.

### 3.0 **Support, advice and guidance**

- 3.1 HR Advisers will provide support and guidance to managers in the use of the Council's disciplinary procedure.

At the formal stages a member of the Human Resources team will accompany the manager, asking questions as appropriate, and providing advice on procedural matters.

### 4.0 **Definitions**

- 4.1 Misconduct refers to a breach of the standards of conduct expected of employees. Breaches are divided into two categories, dependent on their seriousness: Misconduct and Gross misconduct.
- 4.2 Examples of misconduct include:
  - Lateness
  - Unauthorised absence
  - Unreasonable language or behaviour
  - Carelessness or negligence
  - Breach of Council procedure
- 4.3 Gross misconduct is regarded as misconduct of such a nature that it represents an irrevocable breakdown of the relationship between the employee and the Council and justifies the Council in no longer accepting the

continued presence of the employee at the place of work.

#### 4.4 Examples of gross misconduct may include:

- Dishonesty or abuse of position: receipt of money, goods, or pecuniary advantage in respect of any services rendered, accepting bribes or gifts, either to gain business or for personal gain, unauthorised use of Council materials, equipment, facilities or other resources for private purposes;
- Theft of Council property, stealing from members of the staff or public;
- Defrauding the Council: any deliberate attempt to defraud the Council or a member of staff or member of the public. This includes falsification of records including financial claims (time sheets, sickness claims, expenses etc.), and failure to declare inaccurate information at the time;
- Deliberate damage – causing damage to the property or the reputation of the Council, clients, other employees or members of the public, including breaches of confidentiality and trust and unauthorised disclosure of information classified as confidential by the Council;
- Assault/violence: an assault on a fellow employee/worker or member of the public. This includes fighting, physical or serious verbal abuse;
- Discrimination or harassment: Harassment is unwanted conduct affecting the dignity of men and women in the workplace. It may be related to age, sex, race, disability, religion, sexual orientation, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident;
- Acts prejudicial to Eastbourne Borough Council interests (inside or outside of work);
- Engaging in politically restricted activities: as defined by the Local Government and Housing Act 1989, when holding a politically restricted post;
- Criminal offences: committed outside working hours which renders the employee unsuitable for continued employment with the Council;
- Negligent behaviour – any action or failure to act which seriously threatens the health and safety of an employee or member of the public or causes unacceptable loss, damage or injury;
- \*Drunkenness or being under the influence of drugs at work: attending work under the influence of alcohol or an illegal substance or consuming alcohol or taking an illegal substance whilst at work;

- Refusal to carry out a reasonable management instruction;
- Bringing the Council into disrepute including, but not limited to, any conduct that potentially causes the Council's reputation to be brought into question.

This list is neither exclusive nor exhaustive.

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

## 5.0 **Summary of Disciplinary Procedure**

5.1 The Disciplinary procedure contains the following stages:

<b>Type of misconduct</b>	<b>Sanction</b>	<b>Valid</b>
Minor matter	Informal action Meeting with the employee	Discussion confirmed in writing and held on record for 12 months
Misconduct	First Written Warning	12 months
Serious or repeated misconduct	Final Written Warning	12 months
Serious or Repeated misconduct	Dismissal with notice	
Gross misconduct	Dismissal without notice	

## 6.0 **Informal action**

6.1 Minor conduct issues should be raised with the employee as soon as possible. The manager should be very clear with the individual about the shortfall in conduct, explaining the standard required. Taking the employee's feedback into account, clear standards for improvement will be agreed. The manager will summarise the discussion in writing and send to the employee.

The letter will be placed on the individual's personal file. It will form part of the background record if the matter progresses to the formal disciplinary process during the 12 month period.

6.2 There will be situations where matters are more serious or where an informal approach has been tried but has not worked. If informal action does not bring about an improvement, or the misconduct is considered to be too serious to be classed as minor, the formal procedure should be implemented.

## 7.0 **Formal action**

- 7.1 Where a disciplinary investigation is required, all allegations should be thoroughly investigated by the employee's immediate line manager. There may be occasions when it is not appropriate for the line manager to undertake the investigation because they are involved in some way in the matter to be considered. In this event, another appropriate manager will undertake the investigation. This person will be known as the Investigating Officer and will be advised by an HR Adviser. Where possible, the employee will be informed in writing of the situation, the broad nature of the allegations and the procedure to be followed.
- 7.2 The Investigating Officer will undertake a thorough investigation into the matter. The employee's explanation of the events will be obtained and witnesses interviewed and asked to provide statements where this is appropriate. The employee will be advised that information gained by questioning him/her can be presented at any subsequent disciplinary hearing.
- 7.3 The Investigating Officer may call on other Eastbourne Borough Council employees to supply information which will assist in the investigation. Where other employees are questioned, it will be explained to them that they may be asked to provide a statement and/or to attend a disciplinary hearing and act as a witness.
- 7.4 The investigation process will be concluded as quickly as possible and where practicable within 10 days of the manager becoming aware of the matter.
- 7.5 Once the Investigating Officer has completed the investigation they can decide that:
- there is insufficient evidence to pursue disciplinary action;
  - formal disciplinary action is not appropriate and recommend that management advice, counselling or training is provided;
  - there is sufficient evidence to support the allegations. In this case the Investigating Officer will recommend that a formal disciplinary hearing is arranged.
- 7.6 If after the investigation there is no evidence to substantiate the need for formal proceedings, the employee will be informed of this in writing, and if under suspension, will return to work immediately.
- 7.7 If management advice, counselling or training is required this will be confirmed in a letter to the employee. The manager will continue to monitor and review the employee's conduct to ensure that required standards are met.

## 8.0 **Suspension**

- 8.1 If the matter to be investigated, or having been investigated, is thought to involve serious misconduct, the employee may be suspended from work on full basic pay while the investigation proceeds or moved to other duties if

appropriate.

The provision to suspend from duty should only be used in exceptional circumstances and only then on the specific instruction of a Chief Officer or in his/her absence, a senior manager designated to deputise in conjunction with the Strategic Organisational Development Manager. This might be when the allegation relates to potential gross misconduct or because the employee's presence at work may hinder the investigation. 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.

The period of suspension will be kept as short as possible and should be kept under regular review. Suspension will normally last until an investigation has been concluded or any disciplinary hearing has been held.

8.2 Employees who fall sick during a period of suspension will be subject to the Attendance Management Policy, and may be required to be examined by the Council's Medical Adviser. Their sickness will not necessarily lead to a deferment of the disciplinary investigation.

8.3 Employees on suspension must not enter Council offices or discuss the circumstances relating to their suspension with colleagues or third parties unless they have the prior permission to do so from the suspending officer. If an employee wishes to collect personal belongings they must contact Human Resources to arrange to be accompanied. In addition, the suspended staff member is expected to be available within normal working hours to assist with the investigation.

## 9.0 **Disciplinary Hearing**

9.1 Where it is decided by the Investigating Officer to refer the case to a disciplinary hearing, the employee will be given at least two full working days' notice of the date of the hearing. The invitation to a disciplinary hearing will clearly state the allegations against the employee and the right to representation. Copies of the management case and any supporting information which may be referred to at the hearing will be enclosed, including any witness statements.

9.2 The employee will be invited to submit a response in writing to the allegations along with any supporting statements or documentation by a specific date and time prior to the hearing.

9.3 The person hearing the disciplinary, (Deciding Officer) will be a more senior manager, or at least of equal grade, than the Investigating Officer within the service area /department. The Deciding Officer will be supported by a member of the HR team This person hearing the disciplinary will decide what action, if any, is necessary.

The Investigating Officer will not take part in deciding any disciplinary action but may be asked to present the case at the hearing.

The employee, called to attend the hearing, is entitled to be accompanied by a Trade Union representative or workplace colleague and will be asked to set out their case and answer any allegations that have been made. The employee will also be allowed to ask questions, present evidence and be given an opportunity to raise points about any information provided by witnesses.

9.4 In circumstances where a possible outcome could be dismissal, the Deciding Officer will be the Senior Head of Service or Chief Officer, or exceptionally another senior manager, in consultation with the Strategic Organisational Development Manager.

9.5 If relevant and required by the Deciding Officer, the Investigating Officer will present their case and the employee will be given the chance to respond.

The Deciding Officer will listen to the employee and where relevant the Investigating Officer consider any mitigating circumstances and ask questions of the Investigating officer and the employee. They will then decide appropriate action.

9.6 The Deciding Officer will consider whether on the balance of probability the allegation(s) have been substantiated and determine any disciplinary action. It is sufficient that the employer genuinely believes on reasonable grounds that the employee is guilty of misconduct. The manager should take into account the employee's current disciplinary and general record, length of service, actions taken in any previous similar case, the explanations given by the employee and any mitigating circumstances. The manager should also consider whether the intended disciplinary action is reasonable under the circumstances.

#### 10.0 **Failure to attend the hearing**

10.1 If the employee is unable to attend the meeting due to the unavailability of their representative, an alternative date will be arranged, within 5 working days of the first date. If they are unable to attend that meeting it will then be held in their absence but they will be given the opportunity to nominate a representative to present the case on their behalf.

If the employee is unable to attend due to long term sickness absence and no alternative date can be mutually agreed, the meeting may proceed after taking advice from the Council's Occupational Health Advisor. The employee's representative can attend to speak on the employee's behalf.

#### 11.0 **Grievances during the disciplinary process**

11.1 In the event that an employee raises a grievance or a dignity at work complaint in the course of the disciplinary process, the Council will normally suspend consideration of the grievance or complaint until the outcome of the disciplinary process is known. Each case will, however, be considered on its merits to ensure that the Council is acting reasonably. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

## 12.0 **Disciplinary action – Formal Warnings**

12.1 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.

12.2 The manager will adjourn at the end of the hearing to make a decision based on the evidence provided. If the decision can be made at the end of the meeting it will be communicated to the employee. However if more time is required the decision will be communicated within 3 working days of the meeting. The outcome will be one of the following:

- a first written warning;
- a final written warning;
- dismissal;
- no further disciplinary action/management advice.

12.3 Other sanctions which may be considered in addition to the issue of a warning include removal or withholding of increments, withdrawal of flexible working, and other measures such as an individual action plan.

### 12.4 **First Written Warning**

If the decision can be made at the end of the meeting it will be communicated to the employee. However if more time is required the decision will be communicated within 3 working days of the meeting.

The first written warning will set out the nature of the misconduct and the change in behaviour required.

12.5 The employee should be informed of the consequences of failing to improve their behaviour which will be a final written warning and/or ultimately, dismissal.

12.6 The first written warning will remain live for disciplinary purposes for a period of 12 months.

### 12.7 **Final Written Warning**

This stage will apply where there is further misconduct within twelve months of a first written warning being issued or where the misconduct is sufficiently serious to be dealt with in the first instance at this stage.

12.8 The final written warning should set out the nature of the misconduct and the change in behaviour required. It should inform the employee that further misconduct or failure to modify behaviour within the set period following a final warning may result in dismissal or some other sanction such as demotion to a lesser graded post without salary protection or transfer to another identified post within the department.

12.9 The final written warning will remain live for disciplinary purposes for a period of 12 months.



## 12.10 **Confirming a warning**

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.

The letter will outline the employee's right of appeal and how an appeal can be initiated.

## 13.0 **Dismissal**

13.1 The final stage in the disciplinary process will be dismissal. This stage may only apply in either of the following circumstances:

- (i) further misconduct within twelve months of a warning being issued or in the event a warning has been extended within the extension period of the warning;
- (ii) gross misconduct which will be dealt with in the first instance at this stage.

13.2 Where conduct is so serious as to warrant summary dismissal, the employee may be dismissed without notice.

For an act of gross misconduct, dismissal will be without notice or payment in lieu of notice (summary dismissal).

For an act of further misconduct which in itself is not gross misconduct, after a written warning has been given and remains on file, dismissal will be with notice.

13.3 The employee should be informed of the reasons for the dismissal, the date on which the employment contract will terminate, the appropriate period of notice and their right of appeal.

13.4 There may occasionally be exceptional circumstances where the Senior Head of Service (or Chief Officer) takes the view that whilst dismissal may be warranted, organisational and employee circumstance may best be served by action short of dismissal itself. In these circumstances, the following sanction may be considered as an alternative to dismissal only:

The issue of a final written warning, accompanied by one or more of the following sanctions:

- Transfer to another job
- Demotion
- Withhold annual pay increment

In some circumstances it may be appropriate to also arrange counselling or additional training.

If the employee does not accept the alternative sanction then an appeal

hearing will be arranged with another member of the Corporate Management Team to consider the appropriate sanction.

#### 14.0 **Appeal process**

14.1 The employee has a right to appeal against the outcome of the disciplinary hearing. The appeal is to be made in writing, giving reasons, and submitted within 10 working days of the employee receiving the disciplinary warning or confirmation of dismissal.

#### 14.2 **Appeal against a warning**

Appeals against a warning 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 has been issued by the Chief Officer, the appeal will be heard and determined by another Chief Officer.

14.3 Within 10 working days of receipt of an appeal, the officer hearing the appeal shall hold a meeting with the employee. The employee may be accompanied by a trade union representative or nominated colleague.

14.4 Where possible, the officer hearing the appeal will give his or her decision at the conclusion of the meeting following an adjournment to consider the decision. He or she may uphold or reject the appeal. The decision will be confirmed in writing within 3 working days of the meeting.

There is no further right of appeal against a warning.

14.5 If the appeal is upheld the warning will be disregarded for disciplinary purposes.

#### 14.6 **Appeal against dismissal**

Appeals against dismissal will be heard by the Council's Disciplinary Appeals Panel comprising of three selected Members.

14.7 On receipt of an appeal against dismissal the Chief Officer (or Senior Head of Service) will notify the Strategic Organisational Development Manager who will convene a meeting of the Disciplinary Appeals Panel within 10 working days.

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

14.9 If the appeal is upheld the employee will be reinstated in his or her employment on the original terms and conditions and the Employee will receive any salary that would have been paid from the date of dismissal to the reinstatement date. In addition, a written warning or action short of dismissal and an additional sanction may be issued.

14.10 The decision of the Appeals Panel is final and there is no further right of appeal.

15.0 **Appeal against action short of dismissal and an additional sanction**

15.1 If an employee does not accept an alternative sanction then an appeal hearing will be arranged with another member of the Corporate Management Team to consider both the recommended level of warning plus the additional sanction.

15.2 If the appeal against the additional sanction is rejected and the employee then accepts the additional sanction, there is no further right of appeal.

15.3 If the appeal against the additional sanction is rejected and the employee does not agree to the sanction being applied, then the outcome will be dismissal.

Appeals against dismissal will be heard by the Council's Disciplinary Appeals Panel comprising of three selected Members.

15.4 If the employee's appeal is upheld regarding the additional sanction then it will be removed and the level of warning will be considered. If the appeal against the final written warning is upheld then the warning may be reduced to a first written warning or removed.

16.0 **Time limits**

16.1 The time limits referred to in this procedure may be varied by agreement.

## **APPEALS PROCEDURE**

- 1.1 The Deciding Officer will present his or her position to the Head of Service (or Chief Officer).
- 1.2 An officer who is to appear in support of the Deciding Officer's case may present information or be questioned by the Deciding Officer.
  - This officer may then be questioned by the Appealing Employee.
  - This officer may then be questioned by the Head of Service (or Chief Officer).
  - The Deciding Officer may then summarise this contribution to his or her position.
- 1.3 Further persons appearing in support of the Deciding Officer's position may then be heard, following the same procedure.
- 1.4 The Appealing Employee will present his or her position to the Head of Service (or Chief Officer).
- 1.5 Any person who is to appear in support of the Appealing Employee may present information or be questioned by the Appealing Employee.
  - This person may then be questioned by the Deciding Officer.
  - This person may then be questioned by the Head of Service (or Chief Officer).
  - The Appealing Employee may then summarise this person's contribution to making his or her response.
- 1.6 Further persons appearing in support of the Appealing Employee's Position may then be heard, following the same procedure.
- 1.7 Both parties will be given the opportunity to summarise and conclude their case.
- 1.8 The Head of Service (or Chief Officer) will then adjourn to consider the matter and reach a conclusion.
- 1.9 Following adjournment the meeting will be reconvened and the The Head of Service (or Chief Officer) will confirm the decision.
- 1.10 The Appealing Employee may request his/her Union representative or a nominated fellow worker representing him or her to present their case.

## **APPEALS' PANEL PROCEDURE**

- 1.1 The Panel Chair will be elected before proceedings commence. When both parties are present, the following procedure will be followed:

- 1.2 The Chief Officer will present his/her case to the panel.
- 1.3 An Officer who is to appear in support of the Chief Officer's case may present information relevant to the case and/ or be questioned by the Chief Officer.
  - This officer may then be questioned by the Appealing Employee or their representative.
  - This officer may then be questioned by the Panel.
  - The Chief Officer may then summarise this contribution to his/her case.
- 1.4 Further persons appearing in support of the Chief Officer's position may then be heard, following the same procedure.
- 1.5 The Complainant will then make his or her response.
- 1.6 Any person who is to appear in support of the Complainant may then present information relevant to the case and/or be questioned by the Complainant.
  - This person may then be questioned by the Chief Officer.
  - This person may then be questioned by the Panel.
  - The Complainant may then summarise this person's contribution to making his or her response.
- 1.7 Further persons appearing in support of the Complainant position may then be heard, following the same procedure.
- 1.8 The Chief Officer will then summarise and conclude his/her case.
- 1.9 The Complainant will then summarise and conclude his or her case.
- 1.10 The Panel will then adjourn to consider the matter and reach a conclusion.
- 1.11 Following adjournment the meeting will be reconvened and the Chair of the Panel will confirm the decision.
- 1.12 The Complainant may request his/her Union representative or a nominated fellow worker representing him or her to present their case.