

## **Disciplinary Procedure**

### **1. PURPOSE AND SCOPE**

This procedure is designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance. The aim is to ensure consistent and fair treatment for employees whilst promoting orderly employment relations.

Formal disciplinary action will not normally be considered as a first step (except in cases of potential Gross Misconduct). Informal discussions will be used to seek to resolve problems in the first instance. However, there will be recourse to the formal procedure for persistent breaches of conduct, if there is no improvement in performance within a reasonable period, or if the required improvement fails to be maintained.

#### **Examples of misconduct that could result in disciplinary action:**

- Unsatisfactory attendance or timekeeping
- Failure to follow health and safety regulations
- Breaches of council policies
- Unauthorised absence from the work place
- Unwillingness to carry out reasonable duties
- Negligence in the use of council property or equipment
- Failings in preserving the dignity, respect and privacy of others
- Failure to follow instructions
- Failure to comply with workplace targets

This list is not exhaustive

### **2. INFORMAL PROCEDURE**

Minor problems will be dealt with informally, and the employee will be clearly told why and how their performance/conduct needs to change and the consequences of failing to improve. A brief note of the date on which the issue was discussed and what action was agreed will be made in the personnel records of the employee.

Subject to satisfactory conduct and performance, the note will be destroyed after 6 months and the employee notified accordingly. Where the matter is more serious or where informal discussions and counselling have not succeeded in achieving the required result, the formal disciplinary procedure will be used.

### **3. PRINCIPLES OF THE DISCIPLINARY PROCEDURE**

- A)** The Proper Officer has overall responsibility for the management and discipline of all council staff. However, where the Proper Officer is the subject of disciplinary action the Mayor is responsible for discipline.
- B)** The council acknowledges that there is a distinction between the **conduct** of an employee and their **capability**. In the case of a problem resulting from the employee's capability, contributory factors will be carefully considered, such as ill health, serious home-based problems or a lack of skill or knowledge. If the matter is due to a lack of skill or knowledge, the council will ensure that by appropriate training, mentoring and guidance, the employee has the opportunity to improve. The improvement required will be clearly explained to the employee, along with what support will be given and how performance will be monitored and reviewed.
- C)** An employee will have the right to appeal against any disciplinary penalty imposed during the disciplinary procedure.
- D)** The disciplinary procedure is comprised of three stages. However, after proper consideration, the procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.
- E)** No employee will be dismissed for a first breach of discipline, except in the case of Gross Misconduct, when the penalty is usually dismissal without notice or payment in lieu of notice.
- F)** If the employee has difficulty reading, or if English is not their first language, any written documentation, e.g. invitations to Disciplinary Hearings or written warnings, will also be explained to them orally by their line manager.

Additional support that may be required at a Disciplinary Hearing will also be taken into consideration and provided as appropriate.

### **4. DISCIPLINARY INVESTIGATIONS**

No disciplinary action will be taken against an employee until the case has been fully investigated by an unbiased investigator. This will usually be the employee's line manager, or a Member of the Council in the case of the Proper Officer. However, if the manager or Member was in some way involved in the matter, wherever possible another manager or Member will conduct the investigation.

Investigatory meetings may be held to establish the facts; in this instance it will be made clear to the employee that these meetings are not Disciplinary Hearings. The employee may be represented at investigatory meetings by an employee representative or work colleague. The person in charge of the investigation should be advised in advance by the employee if they are to be accompanied.

All relevant facts should be accurately recorded promptly before memory fades, including anything that the employee wishes to say. Where there are witnesses to the alleged misconduct, statements should be obtained from them at the earliest opportunity.

In any investigations involving allegations of criminal acts, the Proper Officer will consult in confidence with the full Council, before a decision is made to put the case in the hands of the police. Where the Proper Officer is the subject of the investigation, the full council, shall decide.

Whilst an investigation is taking place, it may be necessary to suspend the employee on full pay pending the outcome of the investigation. Suspension may only be warranted in certain cases, e.g.

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where relationships have broken down or there are risks to council property and/or to other persons. However, a suspension will only be imposed after careful consideration and will be reviewed to ensure that it is kept as brief as possible. It will be made clear to the employee that the suspension is not considered a disciplinary action and does not involve any pre-judgement.

If it is decided, following investigation, that there is a case to answer, the below Disciplinary Hearing procedure will be employed.

## **5. DISCIPLINARY HEARINGS**

### **A) Definition**

A meeting which could result in a formal warning that an employee must improve their conduct or performance, some other sanction as provided for within this procedure, or which may result in dismissal, other than in the circumstances set out under "Exceptions, Other Cases", is referred to as a Disciplinary Hearing.

### **B) Notification**

For every stage in the disciplinary procedure, the employee will be given adequate notice (five working days) in writing of the Disciplinary Hearing to be held, including the nature and basis of the complaint against them and provided with copies of any supporting evidence, including any witness statements. The letter will contain enough information for the employee to be able to understand both what it is they are alleged to have done and the reasons why this is not acceptable. The notice will give details of the time and venue for the hearing and remind the employee of the right to be accompanied. It will be made clear that the employee has the right to appeal any decision taken at the hearing.

Where the presenting manager or employee intends to call relevant witnesses, they should give advance notice that they intend to do this to the person conducting the hearing.

### **C) Timing**

Where possible, the timing and location of the Disciplinary Hearing will be agreed with the employee. The hearing will be held without unreasonable delay, but the employee will be given reasonable time to prepare their case (a minimum of five working days). Hearings will be held in privacy, where there will be no interruptions.

If the employee fails to attend without good reason, the Council may decide to proceed with the hearing in their absence. If the employee fails to attend through circumstances outside their control and unforeseeable at the time the meeting was arranged, e.g. through illness, another meeting will be arranged. However, should the employee fail to attend the re-arranged meeting without good reason, the hearing will proceed and a decision will be taken in their absence based on the available evidence.

### **D) Representation**

The employee has the right to be accompanied by an employee representative or work colleague during any Disciplinary or Appeal Hearing. The line manager or member of the Council who called the Hearing should be advised in advance by the employee if they are to be accompanied. The employee's representative, or colleague, will be given all the documentation that has been given to the employee. If the employee's representative cannot attend on the proposed date, the employee can suggest another date, so long as it is reasonable and not more than five working days after the date originally proposed by the council. However, the five-day limit can be extended by mutual agreement.

## **E) Conducting the Hearing**

Where practicable, the Disciplinary Hearings will be conducted by a Manager/Member who did not conduct the Disciplinary Investigation and has not had previous involvement in the case (this includes conducting a hearing at a previous stage). Those conducting Disciplinary Hearings will keep an open mind and not pre-judge the matter. The precise allegations will be read out at the start of any Disciplinary Hearing.

The hearing will proceed as follows:

- i)** The presenting Manager/Member will state their case, including presenting any evidence and calling witnesses.
- ii)** The employee (or their representative) and the Manager/Member conducting the hearing have the opportunity to ask questions of the presenting manager and their witnesses.
- iii)** The employee (or their representative) present their case, including presenting any evidence and calling witnesses.
- iv)** The presenting manager and the Manager/Member conducting the hearing have the opportunity to ask questions of the employee, their representative and their witnesses.
- v)** Both parties have the opportunity to sum up.

## **6. TAKING DISCIPLINARY ACTION**

### **A) Deciding Upon Disciplinary Action**

Following the investigation and the Disciplinary Hearing, the Manager/Member conducting the hearing will decide if disciplinary action is necessary. Before taking disciplinary action, the following factors must be considered: the employee's disciplinary and general record, length of service, any current warnings, actions taken in any previous similar case, the explanations given by the employee, including any mitigating circumstances, and whether the disciplinary action is reasonable under the circumstances.

### **B) Notification**

If it is decided that disciplinary action is not justified, the employee will be notified of this decision in writing within five working days.

If disciplinary action is to be taken following a Disciplinary Hearing, the employee will be told in writing within five working days of the disciplinary action to be imposed, the time period of the warning, why and how their conduct or performance needs to change, the timescale for the required improvement, a review date (where appropriate), any support the council will offer to improve performance (where appropriate), the consequences of failing to improve conduct or performance within the required time period and their right to appeal against the decision if they are not satisfied with it. A copy of this letter will also be sent to the employee's representative. A copy will be held on the employee's personnel file for disciplinary purposes for the relevant period according to the level of warning. The employee will be notified within the letter for how long the warning will remain current. Where the set time period is less than a year, the council will store the records securely for a year in total before destroying them, to ensure that adequate records are available in the event of a tribunal.

## **7. DOCUMENTATION**

During the disciplinary process, written records will be kept. These will include: the complaint against the employee, the employee's defence, findings made and actions taken, the reasons for action taken and if an appeal was lodged and the outcome of the appeal.

Records will be treated as confidential and kept no longer than necessary. Records will be discarded for disciplinary purposes after set periods, depending upon the stage of the procedure that they relate to. The council will store the records securely for a year in total before destroying them, to ensure that adequate records are available in the event of a tribunal. Copies of meeting records will be provided to the employee, although in certain circumstances some information may be withheld by the council, e.g. to protect a witness.

## **8. THE DISCIPLINARY PROCEDURE**

### **Stage One – First Level Warning**

The employee will be invited in writing to a Disciplinary Hearing in accordance with the procedures set out earlier in this policy. If the employee doesn't give a satisfactory explanation, a formal First Level Warning may be given. They will be advised in writing of the reason for the warning and that it is the first stage of the formal disciplinary procedure. The warning letter will also give details of the improvement required, the timescale for improvement and a review date. The letter will also inform the employee of the right to appeal and that action under Stage Two will be considered if there is no satisfactory improvement within the specified time period.

A copy of this warning will be kept in the employee's personnel file and used as the basis for monitoring and reviewing conduct/performance. The warning will be discarded for disciplinary purposes after 6 months, subject to satisfactory conduct or performance. The council will store the warning securely for a year in total before destroying it, to ensure that adequate records are available in the event of a tribunal.

### **Stage Two – Final Warning or Disciplinary Suspension**

If there is a failure to improve following Stage One, and conduct or performance of the same nature is still unsatisfactory, or if the misconduct is sufficiently serious to warrant only one written warning, but insufficiently serious to justify dismissal (in effect both the first and final written warning), a Disciplinary Hearing will be held to which the employee will receive a written invitation. If the employee is unable to give a satisfactory explanation, a FINAL WRITTEN WARNING will normally be given to the employee. This will give details of the complaint, the improvement required and timescale involved and will warn that further disciplinary action, including potential 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 on the employee's personnel file and used as the basis for monitoring and reviewing conduct/performance, but it will be destroyed after 12 months, subject to satisfactory conduct or performance.

Alternatively, consideration will be given to imposing the penalty of suspension without pay for up to a maximum of five days. A record of this suspension will be kept on the employee's personnel file and used as the basis for monitoring and reviewing conduct/performance, but it will be destroyed after 12 months, subject to satisfactory conduct or performance.

### **Stage Three – Dismissal**

Following Stage Two, if the particular conduct or performance is still unsatisfactory and the employee still fails to reach the prescribed standards, the employee will receive a written invitation to a Disciplinary Hearing. If the employee is unable to give a satisfactory explanation, DISMISSAL will normally result. The decision to dismiss is taken by the Proper Officer in conjunction with a committee consisting of 5 members of the full council. Where the Proper Officer is the subject of the disciplinary action, the decision to dismiss will be taken by a committee consisting of 5 members of the full council (the full council will not be involved in the decision to dismiss to enable an unprejudiced Appeals Panel to operate in the event of an appeal). The employee will be provided with written reasons for dismissal within five working days, the date on which employment will terminate, the appropriate period of notice or payment in lieu of notice and their right of appeal.

## **9. APPEALS**

If an employee wishes to appeal against disciplinary action which has been taken against them the following procedure will apply:

**A)** The employee will give Notice of Appeal to the Proper Officer or Mayor of the Council (where the Proper officer is the appellant) within five working days of the date on which they received the decision notice of the disciplinary action to be taken against them, setting out their grounds for appeal. The Proper Officer or Mayor of the Council will arrange for the matter to be considered by an Appeals Panel at an agreed time and place wherever possible. The Appeals Panel will not include Members or officers who have previously been involved in the case.

**B)** The employee, in consultation if they wish with a staff representative, should provide the Proper Officer or Mayor of the Council with a full written statement of their case, no later than five working days prior to the appeal hearing. The presentation of the written statement above shall not preclude elaboration or additions by either party at the Appeal Hearing. However, management should not introduce new evidence at the appeal stage to justify an earlier disciplinary decision.

**C)** The Appeal will be heard as soon as possible and normally this will be within three weeks of receipt of Notice of Appeal. However, the Appeal Hearing need not take place before the disciplinary action takes effect. The employee will be issued with a letter, inviting them to attend the Appeal Hearing and notifying them of the time and venue for the hearing, their right to call witnesses and to be accompanied. The employee should notify the council of who their representative is to be and whether they will be calling any witnesses. The employee may present their case in person or be represented by a workplace colleague and may call witnesses and produce documents relevant to their case.

### **The Appeal Hearing will be conducted as follows:**

- i)** The presenting manager will state their case, including presenting any evidence and calling witnesses.
- ii)** The employee (or their representative) and the Member conducting the hearing have the opportunity to ask questions of the presenting manager and their witnesses.
- iii)** The employee (or their representative) present their case, including presenting any evidence and calling witnesses.
- iv)** The presenting manager and the Member conducting the hearing have the opportunity to ask questions of the employee, their representative and their witnesses.

- v) Both parties have the opportunity to sum up.
- vi) At the conclusion of the hearing the Appeals Panel shall adjourn to consider their decision. It is possible that disciplinary penalties may be increased on appeal. The Panel may announce their decision verbally, but, in any event, will confirm their findings in writing to the employee concerned within five working days of the Appeal Hearing. There will be no further right of appeal.

## **SPECIAL SITUATIONS**

### **1. CRIMINAL CHARGES OR CONVICTIONS NOT RELATED TO EMPLOYMENT**

If an employee is charged with, or convicted of, a criminal offence that is unrelated to their work, this is not in itself a reason for disciplinary action. The Proper Officer will establish the facts of the case and will consider with the full Council whether the employee's conduct merits further investigation or action under this procedure. Where the Proper Officer is the employee in question, the full council will take the decision whether further investigation or action under this procedure is required.

The main considerations will be whether the offence or alleged offence makes the employee unsuitable for their type of work and the impact it will have on their relationship with their employer, work colleagues and customers.

### **2. OVERLAPPING GRIEVANCE AND DISCIPLINARY CASES**

If an employee raises a grievance during the disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. However, where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

## **EXCEPTIONS**

### **1. GROSS MISCONDUCT**

Gross misconduct is regarded as misconduct serious enough to destroy the trust within the employment contract, thus making any further working relationship impossible.

The following list provides examples of offences which are normally regarded as gross misconduct:

- Theft, fraud, deliberate falsification of records;
- Physical violence, assault on another person;
- Deliberate and serious damage to council property;
- Serious misuse of the council's property or name;
- Serious incapability through alcohol or being under the influence of illegal drugs;
- Serious breach of health and safety regulations;
- Serious negligence which causes unacceptable loss, damage or injury;
- Serious act of insubordination;
- Unlawful discrimination or harassment;

- Bringing the council into serious disrepute;
- Criminal offence, whether committed on or off duty, which is of such a nature that it fundamentally breaches the trust which is the basis of the contractual relationship.

The standard Disciplinary Procedure does not apply in cases of Gross Misconduct. If an employee is accused of an act of Gross Misconduct, he/she may be suspended from work on full pay while the alleged offence is investigated. Suspension may only be warranted in certain cases, e.g. where relationships have broken down or there are risks to council property and/or to other persons. However, a suspension will only be imposed after careful consideration and will be reviewed to ensure that it is kept as brief as possible. It will be made clear to the employee that the suspension is not considered a disciplinary action and does not involve any pre-judgement. The investigation will be conducted by a manager or Member, who wherever possible was not involved in the matter.

If, on completion of the investigation, it is decided that there is a case to answer, the employee will receive a letter informing them of the allegations and inviting them to attend a Disciplinary Hearing, where they will have the opportunity to put their case.

The conditions of the Disciplinary Hearing in the case of Gross Misconduct are the same as for hearings held as part of the standard disciplinary procedure.

If, on completion of the investigation and the Disciplinary Hearing, the manager or Member conducting the hearing is satisfied that Gross Misconduct occurred, the result will normally be summary dismissal without notice or payment in lieu of notice. The decision to dismiss is taken by the Proper Officer and a committee consisting of 5 members of the full council. Where the Proper Officer is the subject of the disciplinary action, the decision to dismiss will be taken by a committee consisting of 5 members of the full council (the full committee will not be involved in the decision to dismiss to enable an unprejudiced Appeals Panel to operate in the event of an appeal). Within five working days, the employee will be provided with a letter specifying the misconduct which has led to the dismissal and their right of appeal, following the Appeals Procedure outlined earlier in this document.

### **OTHER CASES**

The Disciplinary Procedure does not apply to termination of employment in the following cases:

- A)** On termination of a fixed-term or temporary contract;
- B)** In the event of redundancy, including if making more than twenty people redundant at one establishment in a period of ninety days when a different statutory regime applies;
- C)** Where dismissal arises from unsuitability for confirmation of employment. (N.B. although this period is normally up to six months this may be extended for up to a further six months);
- D)** Where the employee cannot continue in the particular position without contravening a statutory requirement

### **REVISIONS**

The policy will be reviewed every four years. In the event that a disciplinary event arises, Kirkham Town Council will take the opportunity to examine its policy, procedures and working methods to see if they can be improved.