



GRIEVANCE AND DISCIPLINARY POLICY

Adopted by the Council on 13 February 2023

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DISCIPLINARY PROCEDURE

This procedure is designed to help and encourage all council employees 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.

PRINCIPLES

No disciplinary action will be taken against an employee until the case has been fully investigated. At every stage in the procedure the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made.

At all formal stages the employee will have the right to be accompanied by a trade union representative or work colleague during the disciplinary interview.

No employee will 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.

An employee will have the right to appeal against any disciplinary penalty imposed.

The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

THE PROCEDURE FOR MISCONDUCT and GROSS MISCONDUCT

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 Society rules or procedures
- Failure to perform your job to the standard expected or in line with your job description/objectives
- Time wasting
- Disruptive behaviour
- Misuse of the council's facilities
- Refusal to carry out reasonable requests or instructions
- 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.

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

- Theft, fraud, deliberate falsification of records, or other acts of dishonesty
- Fighting, assault on another person
- Deliberate damage to property of the council, its workers or members
- Gross incompetence in the conduct of work
- Gross negligence which results in the council or employees 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



- Unauthorised entry to computer records
- Serious breach of the council's, Health & Safety Policy
- 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 causes significant loss, damage or injury
- Accepting bribes or incentive payments from suppliers
- Unauthorised use of Society funds or credit
- Working with an external agency to provide information which 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.

INFORMAL ACTION

Minor misconduct will be dealt with informally usually in a confidential one-to-one meeting between the employee and line manager. In the case of the Clerk being the individual against whom there is a complaint or allegation the matter should be handled discreetly by the Chairman and Vice Chairman and involve an informal meeting initially. However, where the matter is more serious or informal action has not brought about the necessary improvement the following procedure will be used:

FORMAL ACTION

The level of warning you may receive for misconduct/gross misconduct will depend on how serious the council considers the alleged actions to be and your 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.

Disciplinary Letters

If there is a concern about an employee's conduct or behaviour, then a letter will be given to the employee advising them 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.

Disciplinary Meetings

The time and location of a disciplinary meeting should be agreed with the employee and it should be held in a private location with no interruptions. This will normally be without undue delay but allowing the employee to prepare their case e.g. within 5 days of the letter being sent, where practically possible. At the meeting the manager (or in the case of the Clerk being disciplined, the Chairman) will state the complaint against the employee and go through the evidence which 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.

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. They 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
- their 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 Line Manager. 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 Line Manager (or in the case of the Clerk being disciplined by the Chairman) 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 the Society 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 them, 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.

SUSPENSION

If you are accused of an act of gross misconduct, you may be suspended from work on full pay while the council investigates the alleged offence. Only the appropriately convened committee has the power to suspend. This enables a swift and thorough investigation to occur. Whilst suspended pending disciplinary investigation regular contact with a nominated person at the council will be maintained although access to premises, equipment or systems may be denied. The Investigator who compiles evidence for the disciplinary hearing must play no part in the subsequent decision-making to ensure impartiality. Councils need to consider the implications of such arrangements on its hearing and appeal panel plans early on in the disciplinary process.



APPEALS

The Appeals stage of the disciplinary process is part of the Code of Practice to which an 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 Chairman 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.

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 a trade union representative 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 them to or prevent the employee explaining their case.

HEARING PANELS

The SLCC advise that councils establish hearing panels to hear disciplinary and grievance hearings on an annual basis so that if a dispute does arise in the workplace the elected members involved are already trained and briefed on their duties as a hearing or appeal panel member. In situations where individual members are implicated in the dispute or have undertaken an investigatory role then they will need to be substituted as panel members.

NOTE-TAKING

It is highly recommended that a note-taker be provided to every meeting/hearing which arises as a result of a disciplinary process as Employment Tribunals are particularly keen to view contemporaneous notes of events which have led to an employment dispute. Councils will need to give this requirement careful consideration in order to respect employee confidentiality.

GRIEVANCES RAISED DURING DISCIPLINARIES

In some circumstances when a disciplinary process has commenced an employee chooses to exercise their right to raise an internal grievance about the employment relationship with the council or individual Members. The SLCC recommends, in line with ACAS advice, that disciplinary matters are placed on hold until grievances have been aired and actions towards a resolution have been



progressed. In exceptional circumstances it is pragmatic to deal with the two disputes concurrently but SLCC would advise caution and specialist advice should be sought if this arises.

CRIMINAL CHARGES OR CONVICTIONS

If an employee is charged with or convicted of a criminal offence this does not automatically give rise to a disciplinary situation. Consideration needs to be given to how a charge or conviction may affect an employee's ability to undertake his or her job duties and their relationships with the employer, colleagues, subordinates or customers.

GETTING IT WRONG

Failure to follow the ACAS Code of Practice (available at www.acas.org.uk) can lead to an Employment Tribunal awarding an uplift of an award against the council of up to 25%. Tribunals dealing with unfair dismissal claims are particularly interested in whether the employer followed a procedure and whether the employer acted fairly and reasonably. One way in which to avoid such a penalty is to have an agreed procedure, communicate that procedure to staff and Members, revisit and review the procedure regularly and have some training for those who are expected to operate the procedure.



GRIEVANCE PROCEDURE

Introduction

1. This policy is based on and complies with the ACAS Code of Practice 2015. It aims to encourage and maintain good relationships between the Council and its employees by treating grievances seriously and resolving them as quickly as possible. It sets out the arrangements for employees to raise their concerns, problems or complaints about their employment with the Council. The policy will be applied fairly, consistently and in accordance with the Equality Act.
2. Many problems can be raised and settled during the course of everyday working relationships. Employees should aim to settle most grievances informally with their line manager.
3. This policy confirms:
 - employees have the right to be accompanied or represented at a grievance meeting or appeal by a companion who can be a workplace colleague, a trade union representative or a trade union official. This includes any meeting held with them to hear about, gather facts about, discuss, consider or resolve their grievance. The companion will be permitted to address the grievance/appeal meetings, to present the employee's case for their grievance/appeal and to 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 the date of the grievance/appeal meetings. Employees and their companions must make all reasonable efforts to attend. 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 five working days of the original meeting date unless it is unreasonable not to propose a later date.
 - any changes to specified time limits must be agreed by the employee and the Council.
 - an employee has the right to appeal against the decision about their grievance. The appeal decision is final.
 - information about an employee's grievance will be restricted to those involved in the grievance process. A record of the reason for the grievance, its outcome and action taken is confidential to the employee. The employee's grievance records will be held by the Council in accordance with the General Data Protection Regulation (GDPR).
 - recordings of the proceedings at any stage of the grievance procedure are prohibited, unless agreed by all affected parties as a reasonable adjustment that takes account of an employee's medical condition.
 - if an employee who is already subject to a disciplinary process raises a grievance, the grievance will normally be heard after completion of the disciplinary procedure.
 - if a grievance is not upheld, no disciplinary action will be taken against an employee if they raised the grievance in good faith.
 - the Council may consider mediation at any stage of the grievance procedure where appropriate, (for example where there have been communication breakdowns or allegations of bullying or harassment). Mediation is a dispute resolution process which requires the consent of affected parties.



- employees can use all stages of the grievance procedure if the complaint is not a Code of Conduct complaint about a Councillor. Employees can use the informal stage of the Council's grievance procedure (paragraph 4) to deal with all grievance issues, including a complaint about a Councillor. Employees cannot use the formal stages of the Council's grievance procedure for a Code of Conduct complaint about a Councillor. If the complaint about a Councillor is not resolved at the informal stage, the employee can contact the Disciplinary and Grievance Monitoring Officer of Winchester City Council who will inform the employee whether or not the complaint can be dealt with under the Code of Conduct. If it does not concern the Code of Conduct, the employee can make a formal complaint under the Council's Grievance Procedure.
- if the grievance is a Code of Conduct Complaint against a Councillor, the employee cannot proceed with it beyond the informal stage of the Council's Grievance Procedure. However, whatever the complaint, the Council has a duty of care to its employees. It must take all reasonable steps to ensure that employees have a safe working environment, for example by undertaking risk assessments, by ensuring staff and Councillors are properly trained and by protecting staff from bullying, harassment and all forms of discrimination.
- if an employee considers that the grievance concerns their safety within the working environment, whether or not it also concerns a complaint against a Councillor, the employee should raise these safety concerns with their line manager at the informal stage of the grievance procedure. The Council will consider whether it should take further action in this matter in accordance with any of its employment policies (for example Health and Safety Policy or Dignity at Work Policy) and in accordance with the Code of Conduct regime.

Informal grievance procedure

4. The Council and its employees benefit if grievances are resolved informally and as quickly as possible. As soon as a problem arises, the employee should raise it with their manager to see if an informal solution is possible. Both should try to resolve the matter at this stage. If the employee does not want to discuss the grievance with their manager (for example, because it concerns the manager), the employee should contact the Chairman. If the employee's complaint is about a Councillor, it may be appropriate to involve that Councillor at the informal stage. This will require both the employee's and the Councillor's consent.

Formal grievance procedure

5. If it is not possible to resolve the grievance informally and the employee's complaint is not one that should be dealt with as a Code of Conduct complaint (see above), the employee may submit a formal grievance. It should be submitted in writing to the Chairman.
6. The Council will appoint a sub-committee of three members to investigate the grievance. The sub-committee will appoint a Chairman from one of its members. No Councillor with direct involvement in the matter shall be appointed to the sub-committee.

Investigation

7. If the sub-committee decides that it is appropriate (e.g. if the grievance is complex), it may appoint an Investigator to carry out an investigation before the grievance



meeting to establish the facts of the case. The investigation may include interviews (e.g. the employee submitting the grievance, other employees, Councillors or members of the public).

8. The Investigator will summarise their findings (usually within an investigation report) and present their findings to the sub-committee

Notification

9. Within 10 working days of the Council receiving the employee's grievance (this may be longer if there is an investigation), the employee will normally be asked, in writing, to attend a grievance meeting. The written notification will include the following:

- the names of its Chairman and other members.
- the date, time and place for the meeting. The employee will be given reasonable notice of the meeting which will normally be held within 25 working days of when the Council received the grievance.
- the employee's right to be accompanied by a workplace colleague, a trade union representative or trade union official.
- a copy of the Council's grievance policy.
- confirmation that, if necessary, witnesses may attend (or submit witness statements) on the employee's behalf and that the employee should provide the names of his/her witnesses as soon as possible before the meeting.
- confirmation that the employee will provide the Council with any supporting evidence in advance of the meeting, usually with at least two days' notice.
- findings of the investigation if there has been an investigation.
- an invitation for the employee to request any adjustments to be made for the hearing (for example, where a person has a health condition).

The grievance meeting

10. At the grievance meeting:

- the Chairman will introduce the members of the sub-committee to the employee.
- the employee (or companion) will set out the grievance and present the evidence.
- the Chairman will ask the employee questions about the information presented and will want to understand what action he/she wants the Council to take.
- any member of the sub-committee and the employee (or the companion) may question any witness.
- the employee (or companion) will have the opportunity to sum up the case.
- a grievance meeting may be adjourned to allow matters that were raised during the meeting to be investigated by the sub-committee.

11. The Chairman will provide the employee with the sub-committee's decision, in writing, usually within five working days of the meeting. The letter will notify the employee of the action, if any, that the Council will take and of the employee's right to appeal.

The appeal



12. If an employee decides that their grievance has not been satisfactorily resolved by the subcommittee, they may submit a written appeal to the Council. An appeal must be received by the Council within five working days of the employee receiving the subcommittee's decision and must specify the grounds of appeal.
13. Appeals may be raised on a number of grounds, e.g.:
 - a failure by the Council to follow its grievance procedure.
 - the decision was not supported by the evidence.
 - the action proposed by the sub-committee was inadequate/inappropriate
 - new evidence has come to light since the grievance meeting.
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14. The appeal will be heard by a panel of three members of the Council who have not previously been involved in the case. The appeal panel will appoint a Chairman from one of its members.
15. The employee will be notified, in writing, usually within 10 working days of receipt of the appeal of the time, date and place of the appeal meeting. The meeting will normally take place within 25 working days of the Council's receipt of the appeal. The employee will be advised that they may be accompanied by a workplace colleague, a trade union representative or a trade union official.
16. At the appeal meeting, the Chairman will:
 - introduce the panel 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 sub-committee.
 - explain the action that the appeal panel may take.
17. The employee (or companion) will be asked to explain the grounds of his/her appeal.
18. The Chairman will inform the employee that they will receive the decision and the panel's reasons, in writing, within five working days of the appeal meeting.
19. The appeal panel may decide to uphold the decision of the sub-committee or substitute its own decision.
20. The decision of the appeal panel is final.