

## Disciplinary Procedure

<b>Version</b>	<b>Date</b>	<b>Comments</b>
1.0	June 2009	Draft revised policy
2.0	September 2009	Final Version
2.1	January 2010	Amended wording of procedure to use consistent terminology – use of the term meeting throughout procedure (as per ACAS guidance) except for the appeal process which is referred to as a hearing (per wording in the Council's constitution).
2.1	January 2010	Amended date of review to October 2011.
3	February 2015	Draft revised procedure to <ul style="list-style-type: none"><li>• Include employment law updates and include social media;</li><li>• Provide clarity on informal and formal investigations;</li><li>• Provide additional clarity on the matters of suspension, criminal charges, and non-attendance and rescheduling of hearings.</li></ul>
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## **1. Introduction**

- 1.1. This procedure covers the management of disciplinary situations that arise at Eden District Council.
- 1.2. It is not possible to define all acts of misconduct and unacceptable behaviour that could lead to disciplinary action. However, Appendix A provides some examples of acts that may be deemed to be misconduct and gross misconduct. The list is not exhaustive.
- 1.3. Managers should ensure that all employees are informed of the Council's Disciplinary Procedure at induction along with service specific issues. Generally, the test of reasonableness in the circumstances will apply before any disciplinary action is taken. The following question should be asked: 'Would a reasonable person be aware that disciplinary action would result from a certain act or omission?'
- 1.4. Misconduct is any type of behaviour or conduct at work that falls below the standard required by the Council, or is in breach of any Council rule or policy. Where an employee fails to meet the required standard as a result of his/her carelessness, negligence or lack of effort, this could be regarded as misconduct on the basis that such behaviour is within the employee's control. This is different from a capability matter, where no matter how hard the employee tries; s/he is unable to perform their post to the standard required by the Council. Capability issues will be dealt with through the Council's Capability Procedure.

## **2. Responsibilities**

### **2.1. Employees**

- 2.1.1. Employees are responsible for understanding the required standards of behaviour and conduct required of them, and adhering to these at all times.
- 2.1.2. Employees are expected to engage positively in the disciplinary process, whether as the subject of the process or as a witness.

### **2.2. Managers**

- 2.2.1. Managers are responsible for monitoring conduct and behaviour within their team.
- 2.2.2. Under usual circumstances, managers are responsible for taking appropriate informal and formal action to ensure the standards of the Council are maintained within their team, undertaking investigations, disciplinary hearings and/or appeal hearings as appropriate. However, there may be occasions where another nominated officer will undertake these duties and the Council reserves the right to nominate an individual of their choosing for this purpose.

2.2.3. Managers are responsible for seeking advice and guidance from the HR team where necessary to ensure that each case is dealt with appropriately. This will also help to ensure that all employees are treated fairly and consistently.

### **2.3. Human Resources**

2.3.1. The Human Resources team is responsible for ensuring that managers and staff are provided with advice and guidance in relation to the standards of conduct and behaviour expected within the Council.

2.3.2. A member of the HR Team will usually be available to provide advice in disciplinary hearings and appeal hearings.

2.3.3. The Human Resources Team will be responsible for monitoring the implementation of the guidance and reviewing the Policy and associated guidance periodically to reflect changes in legislation and/ or best practice.

### **2.4. External Support**

2.4.1. On occasions it may be necessary to engage the services of external support in relation to this procedure. This may be where specialist knowledge is required or in order to ensure the matter is progressed in a timely manner. Examples of this include engaging an external Investigating Officer or using a colleague from another local authority or partner organisation to sit on a disciplinary panel.

## **3. Confidentiality**

3.1. The Council aims to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved.

3.2. Individuals involved in the disciplinary process (including witnesses and those accompanying colleagues) are asked to respect the confidentiality of the process and must not make electronic recordings of any meetings or hearings they attend.

## **4. Investigations**

4.1. The aim of any investigation is to establish a fair and balanced view of the facts in relation to disciplinary allegations, before deciding whether a disciplinary hearing is required.

### **4.2. On Receipt of an Allegation**

4.2.1. When a disciplinary allegation arises, it is important for the manager of the employee who is the subject of the allegations, or another nominated officer, to determine whether a formal investigation is required.

4.2.2. The approach to determining whether a full investigation is required may differ depending on the circumstances of the case. Where an allegation of serious misconduct such as theft, fraud, bullying or harassment has been made, it would

be usual for the matter to proceed straight to a formal investigation. However, where the allegation is less serious and/or the matter would benefit from further clarity, it may be appropriate for an initial fact-finding exercise to be conducted.

- 4.2.3. As a minimum, it would be usual for the employee who is the subject of the allegation to be informed of the allegation made against them and provided with clarity on how the matter will proceed.
- 4.2.4. Where an employee is called to an initial fact-finding meeting, s/he would not usually have the right to be accompanied to an informal investigatory meeting.
- 4.2.5. Where an initial fact-finding exercise suggests the matter does not require formal investigation, it would be usual for the manager/nominated officer to provide this feedback to the complainant and, where appropriate, take further steps to resolve the matter. In some cases, the grievance procedure may be appropriate, as may be the offer of mediation.

#### **4.3. Formal Investigations**

- 4.3.1. Should a formal investigation be required, the line manager or another nominated officer will act as the Investigating Officer. As part of the investigation, the Investigating Officer will collect any evidence that may be presented at a disciplinary hearing, which may include interviewing relevant witnesses.
- 4.3.2. Employees who are required to attend a formal investigatory meeting will be able to be accompanied to the meeting by a work colleague or a Trade Union representative. If an employee chooses to be accompanied, their companion can make representations to the hearing and ask questions, request adjournments and confer with the employee, however they will not be permitted to answer questions on behalf of the employee.
- 4.3.3. A written account of any formal interviews will be made. These will be shared with the employee and an attempt to seek agreement on the accuracy of the written account will be made.
- 4.3.4. Following completion of the investigation, the Investigating Officer will compile a summary of their findings together with a recommendation to a senior manager who will consider whether there is a disciplinary case to answer.

### **5. Suspension**

- 5.1. Should a formal investigation be required, the matter of suspension will be considered. Whilst suspension is not always necessary, a very serious allegation, particularly one that might lead to dismissal, may warrant a brief period of suspension with pay whilst an investigation is undertaken.
- 5.2. The act of suspension is not a disciplinary sanction and it does not imply that a decision has already been made about the allegations.

- 5.3. If suspension is used, the employee will be issued with a letter detailing the conditions of the suspension within one working day of it taking place.

## **6. Criminal Charges and Convictions**

- 6.1. If an employee is charged with, or convicted of a criminal offence this is not normally in itself reason for disciplinary action. Consideration needs to be given to what effect the charge or conviction has on the employee's suitability to do the job and their relationship with their employer, work colleagues and customers.
- 6.2. Where the conduct of an employee is subject to a criminal investigation, charge or conviction, the Council will investigate the facts before deciding whether disciplinary action is appropriate.
- 6.3. The Council will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where an employee has been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, the Council may have to take a decision based on the available evidence.
- 6.4. A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if the Council considers that it relevant to an individual's employment.

## **7. Notification of a Disciplinary Hearing**

- 7.1. If following the investigation, it is decided that there is a disciplinary case to answer; the employee will be notified of this in writing by their line manager/Human Resources. The letter will contain sufficient information about the alleged misconduct and its possible consequences to enable the employee to prepare to answer the case at a disciplinary hearing. The employee will be entitled to receive copies of any evidence that is to be used in the case, for example, policy statements, minutes of any formal investigatory meetings, a copy of the investigatory report, written/photographic, or witness statements with the notification letter.
- 7.2. The notification letter will also outline the time and venue of the disciplinary hearing, the members of the panel who will hear the case and of the employee's right to be accompanied by a Trade Union representative or work colleague. The employee will be provided with at least 5 working days notice of the disciplinary meeting. In circumstances where the potential outcome of a case could be gross misconduct, it is possible for the relevant parties to agree to extend the minimum notice to 10 working days.
- 7.3. On receipt of the letter of notification of the hearing, if the employee intends to present any supporting documentation/witness statements these must be presented to one of the named panel members in advance of the meeting.
- 7.4. If the employee would like a witness(es) to attend the meeting in response to their case it is their responsibility to contact the witness(es) and to inform them of

the date, time and venue of the disciplinary meeting. (If you are a witness who has been called to a meeting you should approach your manager at the earliest opportunity to request the time off to attend).

## **8. Disciplinary Hearings**

### **8.1. Non Attendance and Rescheduling Hearings**

- 8.1.1. Employees should make every effort to attend a disciplinary hearing if required. If an employee is unable to attend an arranged hearing they should inform Human Resources in advance as soon as possible.
- 8.1.2. If failure to attend is due to circumstances outside the employee's control and unforeseeable at the time the hearing was arranged, it will be re-arranged.
- 8.1.3. If the employee fails to attend the re-arranged meeting without good reason, a decision may be taken in their absence on the basis of the evidence that is available. The employee will be informed in writing of the outcome of the meeting within two working days of the meeting.
- 8.1.4. Failure to attend a disciplinary hearing without good reason, or persistently being unable to attend (eg. for health reasons) may result in the Council taking a decision based on the available evidence.

### **8.2. Disciplinary Hearing Attendees**

- 8.2.1. Those present at the disciplinary hearing will normally be:
  - The panel members hearing the case (two independent parties who have not been previously involved with the case, ie a Manager with the delegated powers to issue disciplinary action, and a Human Resources representative);
  - Investigating Officer - this is the officer who has carried out the investigation and who will present the case;
  - The employee (who is the subject of the disciplinary allegations);
  - The employee's companion (a work colleague or a Trade Union representative).
  - Any relevant witnesses (from either the employer's or the employee's side).
  - A note-taker (person nominated from the employer's side to make notes of the meeting as a record of the proceedings).

### **8.3. Format of the Disciplinary Hearing**

- 8.3.1. The disciplinary hearing will consider the allegations made against an employee and the evidence that has been gathered by the Investigating Officer. The employee will be given the opportunity to respond to the allegations and present their own evidence.

- 8.3.2. If an employee chooses to be accompanied to the hearing, their companion can make representations to the hearing and ask questions, request adjournments and confer with the employee, however they will not be permitted to answer questions on behalf of the employee.
- 8.3.3. Where witnesses are required to attend the hearing, the employee will be given the opportunity to respond to any information given by a witness, but will not normally be permitted to cross-examine witnesses unless in exceptional circumstances, where the Council decides that a fair hearing could not be held otherwise.
- 8.3.4. The Council may adjourn a disciplinary hearing in order to carry out further investigations, such as re-interviewing witnesses in light of new points raised during the disciplinary hearing by the employee. In such situations, the employee will be given reasonable opportunity to consider any new information before the hearing is reconvened.
- 8.3.5. After the Panel has heard the case they will adjourn to decide whether or not disciplinary or any other action is justified. This decision will usually be reached immediately following the meeting or within two working days of the meeting. In normal circumstances, the hearing will be reconvened so that the Panel can inform the employee of its decision in person. If this is not practicable, the employee will be notified of the decision in writing. In all cases, the employee will receive written confirmation of the decision, usually within 5 working days of the hearing.

## **9. Disciplinary Outcomes**

- 9.1. The range of disciplinary outcomes is set out below. No penalty will be imposed without a hearing. The Council aims to treat employees fairly and consistently, and a penalty issued to another employee for similar misconduct will usually have been taken into account but should not be taken as a precedent. Each case will be assessed on its own merits.

- **Allegation is not upheld**

The panel may conclude that the employee has provided an adequate explanation, or there is insufficient evidence to support the allegation that has been made and therefore no disciplinary action will be taken.

- **Stage 1 - Written Warning**

Where misconduct is confirmed and there are no active disciplinary warnings on the employee's file, a written warning will be issued. The warning will set out the nature of the misconduct and the change in behaviour required (with timescale).

A further act of misconduct within the next 6 months would normally result in a final written warning. The written warning will remain current and on file for the purposes of disciplinary for 6 months.

- **Stage 2 - Final Written Warning**

A final written warning may be issued where misconduct has been confirmed and there is already an active warning on the employee's file. Alternatively, if an employee's first misconduct is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur if the employee's actions have had, or are liable to have, a serious or harmful impact on the Council.

The final written warning will set out the nature of the misconduct and the change in behaviour required (with timescale). The final written warning will remain current and on file for disciplinary purposes for 12 months and the employee will be informed that should there be no improvement or change of behaviour in the required timescale they may be subject to a further hearing which may result in dismissal.

- **Dismissal**

If conduct is still unsatisfactory and the employee fails to reach a reasonable standard, or in the case of gross misconduct, dismissal will normally result. Only a Chief Officer or their nominated representative can dismiss. The employee will be provided, as soon as possible, with written reasons for the dismissal, the date on which employment will terminate, the appropriate period of notice and the right of appeal.

In some cases the Panel may use its discretion to consider alternatives to dismissal, such as demotion, transfer to another job or section, loss of seniority or reduction in pay. These will usually be accompanied by a final written warning.

## **10. Appeals**

- 10.1. Where an employee feels that disciplinary action taken against them is wrong or unjust they have the right to appeal against the decision. In these circumstances the employee should write to the Panel who heard the case within 10 working days of receiving the written notification of the outcome of the disciplinary meeting.
- 10.2. The written notice of appeal must clearly state the grounds on which the appeal is being lodged.
- 10.3. Appeals will usually be heard by an appeals panel within 30 working days of the receipt of the appeal being received.
- 10.4. The employee will be given notice in writing at least 5 working days in advance of the time and place of the hearing.
- 10.5. Any extension on the time frames in Sections 9.3 and 9.4 must be agreed in advance by both parties.

- 10.6. The principles relating to non-attendance and rescheduling of hearings, as detailed in Section 7.1 of this procedure, will also apply to appeal hearings.
- 10.7. Where the disciplinary sanction being appealed is short of dismissal, the panel will consist of a manager who has had no prior involvement in the case, and an HR representative.
- 10.8. Where the disciplinary sanction being appealed is dismissal, the Appeals Panel will consist of a sub-committee of the Human Resources and Appeals committee. A sub-committee is made up of three members of the full committee. A member of the HR and Appeals committee would not normally be selected if they have any prior involvement with the case.
- 10.9. The employee may be accompanied to the appeal hearing by a work colleague or a Trade Union representative. If an employee chooses to be accompanied to the appeal hearing, their companion can make representations to the hearing and ask questions, request adjournments and confer with the employee, however they will not be permitted to answer questions on behalf of the employee.
- 10.10. At the appeal hearing all parties (ie the individual who is appealing against the action taken against them and the officer who is presenting the management case) have the opportunity to state their case, call witnesses and to ask questions of each other and his/her witnesses. The panel may also ask questions to anyone involved in the hearing.
- 10.11. Once they have heard the case, the panel may make the following range of decisions.
- to dismiss the appeal; or
  - to allow the appeal; or
  - allow the appeal and substitute a different warning (greater or lesser).
- 10.12. There is no further right of internal appeal against the decision of the Appeals Panel.

## **11. Special Cases**

- 11.1. Where disciplinary action is being considered against an employee who is a Trade Union representative, the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.
- 11.2. Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both processes concurrently.



## **12. Representation**

- 12.1. As confirmed throughout the Procedure, employees may be represented at formal meetings and appeals by a Trade Union representative or a work colleague.

## **13. Interpretation and Variation of Procedure**

- 13.1. Any questions as to the interpretation of this policy shall be referred to the Human Resources Manager.
- 13.2. This procedure will be periodically reviewed or revised to reflect changes in relevant legislation and best practice.

## Appendix 1

### Examples of Disciplinary Offences

(please note that this list is not exhaustive):

- Undeclared acceptance of gifts, presentations and awards;
- Undisclosed pecuniary interest in the Council's contracts;
- Unauthorised action on behalf of the Council or service;
- Public criticism of the Council's decisions and/or activities connected with the employee's own work;
- Disobedience to orders (ie. when an employee without sufficient cause disobeys, omits or neglects to carry out a lawful order whether in writing or not) including failure to observe operational regulations and policies;
- Abuse of authority and/or where an employee's conduct towards a fellow employee or a member of the public is oppressive, abusive or disrespectful;
- Unauthorised employment (ie. engaging in unauthorised employment during hours when contracted to work for the Council, or engaging in employment during off-duty hours which is detrimental to the interests of the authority);
- Misconduct, in relation to official documents (ie when an employee without sufficient cause destroys or mutilates any record or document made, kept or required for the purposes of the Council, or alters, erases or adds to any entry in such a record or document);
- Improper disclosure of information, including the breach of the Data Protection Act;
- Sleeping on duty;
- Unauthorised use of the Council's equipment;
- Smoking within designated no smoking areas, including Council property or on Council owned premises, or vehicles;
- Unauthorised absence or abuse of the sickness scheme.

Examples of acts that could be deemed to be **gross misconduct**:

- Wilful breaches of safety rules.
- Conviction of a criminal offence related to, or liable to have a seriously adverse effect on the work of the employee or other employees, or the credibility of the Council.
- Theft, fraud or dishonesty.

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- Threatening behaviour, assault or fighting.
  - Deliberate and serious misuse of and/or damage to Council property.
  - Unauthorised entry to computer records or deliberate falsification of records
  - Incapability at work brought on by alcohol or illegal drugs.
  - Negligence which causes unacceptable loss, damage or injury.
  - Acts of insubordination.
  - Discrimination against a member of staff or the public on any grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and paternity, race, religion or belief, sex or sexual orientation.
  - Deliberately accessing internet sites containing pornographic, offensive or obscene material.
  - Bringing the Council into serious disrepute.
  - Inappropriate use, or misuse of Share Point for purposes other than those designated.
  - Inappropriate use or misuse of Social Media.
  - Any involvement in bribery, giving, receiving or facilitating bribes.

This list is not intended to be an exhaustive one and only gives an indication of the types of offence that may be considered gross misconduct.

If, on completion of an investigation and the full disciplinary procedure, the organisation is satisfied that gross misconduct has occurred, the result will normally be summary dismissal, ie. dismissal without notice or pay in lieu of notice.