

DISCIPLINARY POLICY AND PROCEDURE

1 Purpose and scope

- 1.1** This procedure is designed to help and encourage all employees of the council to achieve and maintain standards of conduct, attendance and job performance.
- 1.2** This procedure applies to all employees and workers the Council may employ including on a voluntary basis. The aim is to ensure consistent and fair treatment for all employees and workers employed by the Council.

2 Principles

- 2.1** It is anticipated that minor breaches of discipline will be dealt with informally by discussion between the employee or worker concerned and their immediate Line Manager. This may be at a planned supervision meeting, or immediately upon attention being drawn to the issue/matter.
- 2.2** The procedure is designed to establish the facts quickly and to deal consistently and fairly with disciplinary issues, but no disciplinary action will be taken against an employee or worker, until the facts of the case have been appropriately investigated.
- 2.3** In some cases, this will require the holding of an investigatory meeting with the employee or worker before proceeding to any disciplinary hearing. In other cases, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing.
- 2.4** At every stage of the formal procedure the employee or worker will be informed in writing of what is alleged and can state their case at a disciplinary hearing before any decision on action is made.
- 2.5** For formal action the employee or worker will be advised in writing of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made at a disciplinary hearing.
- 2.6** At any stage of the procedure an employee or worker may be accompanied, if they wish, by a representative of their choice limited to a workplace colleague or if in a Union a full-time Trade Union Official or an appropriately trained Union Representative.
- 2.7** The disciplinary panel may be accompanied by an HR contractor to the Council to advise on procedure and who will record the notes of the disciplinary hearing.
- 2.8** Employees or workers will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary hearing. At all stages of the formal procedure the employee should be provided with 5 working days' notice of a hearing date and of the right to be accompanied.
- 2.9** No employee will normally be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty may be summary dismissal.
- 2.10** The procedure may be implemented at any stage if the employee's alleged misconduct warrants this.

3 Disciplinary Procedure

3.1 Informal stage

Where the employee's/worker's conduct, behaviour or performance is falling below expectation, whether it is due to the employee doing something wrong unintentionally or failing to undertake the requirements of their job role. The immediate Line Manager will clarify the breaches in the company's Codes of Conduct with the employee/worker or where the employee's/worker's performance is falling below the necessary standard as determined by the Line Manager.

It may need to be determined if there are any mitigating circumstances, training needs or a requirement for additional support. The improvements required will be agreed with the employee along with timescales over which the necessary improvements will be monitored. In cases where such discussion does not lead to the required improvement, or there has been a further breach of discipline, or where the matter is more serious and cannot be dealt with in an informal way, the following stages of the Formal Disciplinary Procedure should be followed.

3.2 Mediation

Before resorting to the formal procedures and if considered more appropriate both parties may agree to resolving the matter through a process of mediation/conciliation.

Mediation is a tool to deal with disagreements between individuals in the workplace. It is a voluntary process that the Town Council can use to help solve conflict. Mediation is a form of alternative or informal dispute resolution as it is less formal than disciplinary procedures.

Where both parties agree to mediation the Council will seek the services of an external expert to organise the mediation process to reach a conclusion agreeable to all parties involved in the employment issue. Bewdley Town Council follows the guidance from ACAS for mediation latest guidance can be found at <https://www.acas.org.uk/>

3.3 First stage of formal procedure

This will normally be either:

- **An improvement note for unsatisfactory performance**

If performance does not meet acceptable standards, this will set out the performance problem, the improvement that is required, the timescale, any help that may be given and the right of appeal.

The individual will be advised that it constitutes the first stage of the formal procedure. A written record of the improvement note will be given to the employee/worker and a copy kept for six months on the employee's/worker's file, but will then be considered spent subject to achieving and sustaining satisfactory performance or;

- **A first warning for misconduct if conduct does not meet acceptable standards**

This will be confirmed in writing and issued within 7 days of the hearing and set out the nature of the misconduct, the change in behaviour required and the right of appeal. The warning will also inform the employee that a final written warning may be considered if there is no sustained satisfactory improvement or change. A copy of the letter will be kept on the employee's personnel file, but it will be disregarded for disciplinary purposes after a period of six months.

3.4 Final written warning

If the offence is sufficiently serious, (for example because it is having, or is likely to have, a serious harmful effect on the reputation of the Council), it may be justifiable to move directly to a final written warning, or if there is further misconduct or a failure to improve performance during the currency of a prior warning, a final written warning may be given to the employee/worker.

The final written warning will be issued within 7 working days and give details of the complaint, the improvement required and the timescale. It will also warn that failure to improve may lead to dismissal (or some other action short of dismissal) and will refer to the right of appeal. That the final written warning will be kept on their employee's/worker's file but will be disregarded for disciplinary purposes after twelve months' subject to achieving and sustaining satisfactory conduct or performance.

3.5 Dismissal or other sanction

If the offence is a matter of Gross Misconduct or if there is still further misconduct or failure to improve performance the final step in the procedure may be dismissal or some other action short of dismissal.

Delegated authority, by the Council, to take disciplinary action under these disciplinary procedures, including dismissal decisions, are set out in the attached **Appendix 1**. An employee/worker if dismissed will be provided in writing with the reasons for dismissal within 7 days of the hearing, the date on which the employment will terminate, and their right of appeal.

If some sanction short of dismissal is imposed, the employee will receive a letter confirming the action within 7 working days after the hearing, warning the employee that dismissal could still result if there is no satisfactory improvement, and will be advised of the right of appeal. A copy of the action imposed will be recorded on the employee's/worker's personal file but will be disregarded for disciplinary purposes after eighteen months' subject to achieving and sustaining satisfactory conduct or performance.

If performance or conduct does not improve during the currency of the warning or there is a further breach of discipline, then the hearing will be reconvened, and action escalated to dismissal.

4 Examples of actions that could lead to disciplinary action

4.1 General Breaches

The following are examples (although not an exhaustive list) of actions which are liable to lead to disciplinary action against an employee: -

- failure to abide by the general health and safety rules and procedures;
- smoking in designated non-smoking areas;
- consumption of alcohol whilst on duty;
- persistent absenteeism;
- rudeness towards beneficiaries, members of the public or volunteers, objectionable or insulting behaviour, harassment, bullying or bad language;
- making covert recordings in the workplace.
- failure to devote their committed time, attention and abilities to Council's business and its affairs whilst at work;
- unauthorised use of E-mail, and Internet (Tweets, Facebook or other social media) that could bring the Council's name into disrepute;
- failure to carry out all reasonable instructions or follow the Council's policies or procedures;
- unauthorised use or negligent damage or loss of the Council's property;
- failure to report immediately any damage to property or premises caused by an employee/worker;
- any criminal conviction or offence that has a detrimental impact on the performance of your duties or the name of Council;
- if your work involves driving, failure to report immediately any type of criminal conviction, or any summons which may lead to your conviction or could damage the Council's reputation;
- loss of driving licence where driving on public roads forms an essential part of the duties of the post.

4.2 Serious Misconduct

- Is an instance of unsatisfactory conduct or misconduct and if, upon investigation, it is shown to be due to the employee/worker's extreme carelessness or has a serious or substantial effect upon the Council's operations or reputation. Employees/workers may be issued with a final written warning in the first instance.
- Employees/workers may receive a final written warning as the first course of action if upon investigation it is shown that some level of mitigation is treated as an offence just short of dismissal.

4.3 Gross misconduct

Occurrences of gross misconduct will normally result in summary dismissal i.e. without pay in lieu of notice and without any previous warning being issued. Any behaviour or negligence

resulting in a fundamental breach of contractual terms that irrevocably destroys the trust and confidence necessary to continue the employment relationship will constitute gross misconduct. Examples of offences (not an exhaustive list) normally deemed as gross misconduct include serious instances of: -

- theft or fraud
- physical violence or persistent bullying
- deliberate and serious damage to property
- serious misuse of an organisation's property or name
- deliberately accessing internet sites containing pornographic, offensive or obscene material
- serious insubordination
- persistent unlawful discrimination or harassment
- action/acts bringing the Council's name into serious disrepute
- serious incapability at work brought on by alcohol or illegal drugs
- causing loss, damage or injury through serious negligence
- a serious breach of health and safety rules
- a serious breach of confidence.
- a serious breach of trust and confidence
- deliberate falsification of records

5 Suspension

5.1 Employees/workers accused of an act of gross misconduct, may be suspended from work on full pay, normally for no more than 5 working days, while the alleged offence is investigated.

5.2 Suspension is a holding measure and is not a disciplinary act. During this period of suspension, an employee will be prohibited from entering the Council's premises. If, on completion of the investigation and the full disciplinary procedure, the Council is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

6 Appeals

6.1 If an employee/worker wishes to appeal against any disciplinary decision they must do so in writing to the Chair of the Council within 5 working days of receipt of the letter giving details of the formal disciplinary action taken. The letter of appeal should outline the grounds and reasons for appeal.

6.2 All appeals will be heard by individuals with delegated authority to hear appeals by the Council. This list is attached as Appendix 2 to this procedure. At the appeal, any disciplinary penalty imposed will be reviewed by the panel with delegated authority to hear the appeal and whose decision will be final.

7 Right of Representation

7.1 The statutory right is to be accompanied by a fellow worker, a Trade Union Representative, or an official employed by a Trade Union. A Trade Union Representative, who is not an employed official, must have been certified by their union as being competent to accompany an employee/worker.

7.2 If the representative of choice is not available to attend the date set for the hearing another date should be agreed within the following 5 working days from the original hearing date. The employee/worker should notify the Chair of the Council 48 hours prior to the hearing who will be accompanying them. The companion can help the employee/worker in presenting their case but cannot answer questions on the employee's/worker's behalf.

8. Retention of records

8.1 Warnings will normally be disregarded after the periods below, subject to achieving and sustaining satisfactory conduct or improvement in behaviour and conduct.

| | |
|--------------------------------------|-----------|
| Notes made during the informal stage | 6 Months |
| First formal written warning | 6 months |
| Final written warning | 18 months |

9 Voice Recordings of investigation, disciplinary and appeal meetings/hearings

9.1 It is not the Councils' practice to allow voice recordings in the workplace, which includes investigation meetings and disciplinary/appeal hearings as it is believed that this is in breach of the implied terms of trust and confidence under the employment contract.

9.2 Making any covert recordings in the workplace will be treated as gross misconduct and appropriate action will be taken under The Council's Disciplinary Policy and Procedure.

10 Probationary and short-term contracts

10.1 The Council retain discretion in respect of the disciplinary misconduct procedures to take account of an employees/workers length of service and to vary the procedures accordingly. Employees who are on a short term or probationary contract may only be in receipt of a final written warning before dismissal, but employees will retain the right to formal disciplinary misconduct meetings and the right of appeal against the decision taken.

11 Grievances Raised During a Disciplinary Process

11.1 The ACAS Code of Practice on Disciplinary and Grievance Procedures <https://www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures> states that a disciplinary process "may be suspended in order to deal with the grievance".

11.2 If the grievance is so bound up with the discipline it would not make sense to consider them separately as the grievance forms part of the defence to the charge, in such circumstances the Council will consider the merit in hearing and deciding them together. Where the Council decide to combine the grievance and disciplinary hearings, given that both sides should be given sufficient time to prepare, it may be appropriate to delay the disciplinary hearing to allow for the additional preparation resulting from the grievance being raised. In coming to a decision on whether to delay the disciplinary proceedings, the council will consider how long that delay is likely to be.

11.3 If there is no connection, between the grievance and the disciplinary issue the Council is not obliged to put the disciplinary process on hold while the grievance raised is heard (including any appeal) and will arrange a separate meeting for the grievance to be heard.

Appendix 1

Delegated Authority from the Council for actions under the Disciplinary Procedure Review Panel

The operation of the disciplinary procedure is based on the following delegated authority for the various levels of disciplinary action as detailed in the Terms of Reference of the Staffing Committee. However, the list does not prevent a higher level of seniority undertaking any action at whatever stage of the disciplinary process.

| IN THE CASE OF | PERSON AUTHORISED TO TAKE DISCIPLINARY |
|-----------------------|---|
| Informal action | Nominated Line Manager, Chairperson of the Council Staffing Committee |
| Final written warning | Chairperson of the Council Staffing Committee and two further Committee Members |
| Dismissal | Chairperson of the Council Staffing Committee and two further Committee Members |

Appendix 2

Delegated Authority from the Council to hear Appeals

The operation of appeals is based on the following delegated authority for the various levels of Appeal Hearings and on the basis, that wherever possible the individuals hearing the Appeal would not have been previously involved in the disciplinary process.

| APPEAL LEVEL | PERSON WHO WILL HEAR THE APPEAL |
|-----------------------|---|
| Written Warning | Chairperson of the Council plus two council members not previously involved in the issue of a written warning and independent of the review panel. |
| Final written warning | Chairperson of the Council plus two council members not previously involved in the decision to issue a final written warning and independent of the review panel. |
| Dismissal | Appeals Panel made up of three council members not previously involved in the disciplinary process |