



## **Disciplinary Procedure**

### **1. Introduction**

Dover District Council is responsible for the delivery of high quality services across the district and in order to meet our commitments, it is necessary for the proper operation of the Council's business and the health & safety of its employees that the Council operates a disciplinary procedure.

This procedure is designed to help and encourage all employees to understand the standards of conduct expected by the Council and it also provides a fair method of addressing apparent failure to meet those standards

The following procedure will be applied fairly in all instances where disciplinary action is regarded as necessary by the Council's management, save to the extent that a minor reprimand is given for any minor act of misconduct committed by an employee.

### **2. Application of the Procedure**

Without prejudice to the above, the procedure applies to all employees of Dover District Council with the exceptions below:

- termination during, or at the end of, a probationary period of service (including any extended probationary period of employment) where a basic procedure in line with the statutory dismissal and disciplinary procedure will apply instead;
- termination of a fixed-term contract of employment where the term of that contract expires without being renewed;
- termination of a temporary appointment where the reason for termination is that the need for the employee's service has expired, or is about to expire;
- termination of employment by reason of redundancy;
- resignation by the employee, or other termination by mutual consent;
- termination of employment as a result of permanent incapacity or ill health, or;
- incompetence, incapability, or other poor performance at work which is considered to be attributable to a lack of skill or aptitude. The Capability Procedure and Probation Monitoring process exist to resolve such issues;
- the Chief Executive, the Monitoring Officer and Chief Finance Officer, for whom other procedures apply.

The Council reserves the right to implement the procedure at any stage, as set out below, taking into account the alleged misconduct of an employee. Employees will not ordinarily be dismissed for a first disciplinary offence.

Where time limits are referred to in the course of this procedure they may be varied by consent between the employee and the Council.

The Council allows employees to be accompanied at any disciplinary hearing by a fellow worker or trade union official of their choice.

## **2.1 Members of the Council**

Although this policy does not apply to Members of the Council, they are expected to adhere to the following principles:

- (a) In the course of their duties, Members of the Council must not:
- a. do anything which may cause their authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
  - b. bully any person;
  - c. intimidate, or attempt to intimidate, any person who is likely to be
    - i. a complainant
    - ii. a witness, or
    - iii. involved in the administration of any investigation, or proceedings;
  - d. do anything which compromises, or is likely to compromise, the impartiality of those who work for, or on behalf of, the Council.

## **3. Definitions**

### **3.1 Misconduct**

Matters that the Council views as amounting to disciplinary offences include (but are not limited to):

- persistent bad timekeeping;
- unauthorised absence;
- minor damage to Council property;
- failure to observe Council procedures;
- abusive behaviour;
- unreasonable refusal to follow an instruction issued by a manager or supervisor;
- poor attendance; and
- smoking in non-designated areas of the Council's premises.

### **3.2 Serious Misconduct**

An act of misconduct or unsatisfactory performance that is sufficiently serious that it may be appropriate to move directly to a final written warning without implementing earlier sanctions under this procedure would be deemed serious misconduct.

### **3.3 Gross Misconduct**

Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the Council. In the event that an employee commits an act of gross misconduct, the Council will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice.

Matters that the Council views as amounting to gross misconduct include (but are not limited to):

Examples of gross misconduct include, but are not limited to:

- stealing from the Council, members of staff or the public;
- other offences of dishonesty;
- sexual misconduct;
- Violence against, or physical assault on, members of staff or the public, or any other third party;
- falsification of a qualification which is a stated requirement of the employment, or which results in financial gain, or;
- falsification of records, reports, accounts, expense claims or self-certification forms, whether or not for personal gain;
- obtaining employment under false pretences;
- deliberate damage to, or misuse of, the Council's property;
- being under the influence of drink or drugs whilst at work, or on Council business, or;
- possession, custody or control of illegal drugs on the Council's premises;
- serious breach of the Council's rules, including, but not restricted to, health and safety rules and rules on computer use;
- gross negligence;
- conviction of a criminal offence that is relevant to the employee's employment;
- conduct that brings the Council's name into disrepute; and
- incitement to discriminate, or discrimination or harassment against a fellow worker on the grounds of sex, sexual orientation, race, disability, age, or religion or belief.

This list is neither exclusive nor exhaustive and other acts of misconduct may come within the general definition of gross misconduct.

**3.4 Investigation Meetings** may also be called investigation interviews. It will be made clear to all staff invited to attend an investigation meeting that it is a non-accusatory meeting to establish facts and is not intended to infer that any conclusions have been reached. However, depending on the facts established at the interview, the outcome could be disciplinary action against the employee, but a decision on this will not be made until they have had a full opportunity to put forward their version of events and the interview, and any additional investigation, has been concluded.

**3.5 A disciplinary hearing** is a meeting that could result in:

- (a) a formal warning being issued (that is, a warning that will be placed on the employee's record);
- (b) the taking of some other disciplinary action, such as demotion or dismissal, or other action related to a disciplinary matter.

**3.6** All employees who are the subject of disciplinary action or investigation under the terms of this policy are entitled to **natural justice**, or procedural fairness. It is essential therefore that the following principles are applied:

- (a) the employee must be notified of the time, date and venue of the disciplinary interview in advance
- (b) the employee must be provided with a copy of the disciplinary procedure
- (c) the employee must be informed of their right to be accompanied or represented
- (d) the employee must be informed of the allegations against them
- (e) the employee must be given the details of the facts and evidence
- (f) the employee should be given the opportunity at any disciplinary hearing to cross-examine witnesses
- (g) any disciplinary action must only be decided after a full investigation and disciplinary procedure

- (h) signed records of the decision must be kept along with an action plan, timescale and review date, where necessary
- (i) the employee must be informed of the potential outcome, should they fail to achieve the agreed action
- (j) the employee must be notified of the right of appeal and the appeal procedure
- (k) any appeal must be heard by a manager who was not involved in the original disciplinary process.

## **4. Investigation**

Prior to the commencement of a formal investigation, the line manager should discuss with the employee the alleged act of misconduct or poor performance to determine whether or not there is a need to proceed further with a formal investigation.

An employee's supervisor or manager, in conjunction with the Human Resources Section, will promptly and thoroughly investigate any matter that is reasonably suspected or believed to contravene any of the Council's policies or rules, or may otherwise be a disciplinary matter.

The employee will be informed as soon as possible as to the fact of an investigation, the reason for it, the likely timescale of the investigation and when it has been concluded. If it is considered appropriate due to the nature of the matter(s) under investigation, the Human Resources Manager may appoint another manager other than the employee's supervisor or manager, or an Auditor or member of ICT to investigate. This may arise in, but is not limited to, circumstances where there may be a conflict of interest, if the employee's line manager is unavailable, or there is a question of inappropriate use of computer equipment.

The employee and any witnesses interviewed will be advised at the time of interview who will have sight of their statements.

Depending on the circumstances of the case, the employee may be invited, in writing, to attend an investigatory interview. However, in the case of suspected gross misconduct where suspension from duty is deemed appropriate, the employee may be invited to attend a preliminary fact-finding meeting to without notice being given, but will be written to retrospectively to confirm the purpose of the meeting.

If such interviews are held prior to a disciplinary hearing, the employee will be informed at the outset that the interview is an investigatory interview and is not a disciplinary hearing. The employee will be informed however, that following the investigation, where it is believed there is a case to answer, they may be subject to disciplinary action.

Where the employee is also suspected of:

- (a) gross misconduct; or
- (b) where they have already previously received a final written warning

the employee will also be advised that one outcome of any disciplinary action may be their dismissal from employment.

The Council reserves the right to dispense with an investigatory interview and to proceed directly to a formal disciplinary hearing.

## **4.1 Suspension from Duty**

Where it is believed, at the start or during the course of an investigation, that the matter to be investigated involves serious or gross misconduct, or where the employee remaining at work would hinder the course of the investigation, the employee may be immediately suspended from work on full pay and contractual benefits. In such cases, the employee may be invited to attend a preliminary fact-finding meeting without notice being given, but will be written to retrospectively to confirm the purpose of the meeting and any decision to suspend that results from the meeting. Any decision to suspend will be confirmed in writing as soon as reasonably practicable and such written confirmation will state that the nature of the suspension is precautionary, not disciplinary, pending the outcome of the disciplinary proceedings.

## **4.2 False Allegations**

During the course of the investigation, if it is found that allegations have been falsely made against the person subject to the investigation, the member of staff making the allegations may themselves become the subject of disciplinary action.

## **4.3 Witness Statements**

All members of staff interviewed in relation to a disciplinary investigation will be advised that their evidence and signed statements may be made available to the employee who is the subject of the investigation, should the investigation result in disciplinary action.

## **5. Informal Action**

If, on completion of the investigation, the investigating manager believes an alleged act of misconduct has been committed, but in view of the nature of the misconduct and the employee's previous employment record, the manager may decide that formal disciplinary action is unnecessary.

In this case the employee's line manager will meet with the employee to discuss the need for improvement. A written record of this meeting, and the action points agreed, will be kept on the employee's personnel file and may be referred to in the event of any further misconduct.

In the event of poor performance by an employee, disciplinary hearings will usually be undertaken only where counselling of the employee, further training (if appropriate) and informal action have failed to produce a satisfactory improvement to performance.

## **6. The Disciplinary Hearing**

### **6.1 Informing the Employee of the Hearing**

Where, upon completion of an investigation, there are reasonable grounds to believe that an employee has committed an act of misconduct, the employee will be invited to attend a disciplinary hearing before the employee's line manager, or another manager appointed by the Human Resources Manager.

In the event of a disciplinary hearing taking place the Council will:

- (a) give the employee a minimum of 5 days' advance notice of the hearing;

(b) tell the employee the purpose of the hearing and that it will be held under the Council's disciplinary procedure;

(c) give the employee written details of the nature of his/her alleged misconduct;

(d) advise the employee that if a charge of serious misconduct or gross misconduct is proven, or they are already under a final written warning, one outcome of the disciplinary hearing is that they may be dismissed from employment;

(e) provide to the employee all relevant information (which should include any relevant witness statements);

(f) employees may also make a written submission and this should be submitted to the HR Section reasonably in advance of the hearing.

## **6.2 Non-attendance at a Disciplinary Hearing**

Where the employee is unable to attend a disciplinary hearing and provides a good reason for failing to attend, the hearing will be adjourned to another day. The Council will comply with (a) above in respect of giving notice of the rearranged hearing.

Unless there are special circumstances mitigating against it, if the employee is unable to attend the rearranged hearing, the rearranged hearing will take place in the employee's absence. The employee's fellow worker or trade union official may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation.

If an employee fails to attend a rearranged hearing and does not provide a written submission, or is not represented, the hearing may go ahead in their absence and a decision made on the available evidence at that time.

## **6.3 The Disciplinary Hearing**

A disciplinary hearing will normally be conducted by the employee's line manager together with a Human Resources Officer (the Panel). Another member of management may be appointed to the Panel instead of the employee's line manager at the discretion of the Human Resources Manager.

Any member of management responsible for the investigation of the disciplinary offence(s) shall not be a member of the Panel, save to the extent that such a manager may present any supporting facts and material (the management case) to the disciplinary hearing. The employee will be entitled to be given a full explanation of the case against him/her and put forward an explanation of his/her conduct and/or mitigating factors.

The employee and their companion or union representative will be entitled to question the investigating manager and any witnesses called. If representation is made on the employee's behalf, the chair reserves the right to request that the employee responds in their own words.

The Panel may adjourn the disciplinary proceedings if it appears necessary or desirable to do so (including for the purpose of gathering further information). The employee will be informed of the period of any adjournment. If further information is gathered, the employee will be allowed a reasonable period of time, together with his/her fellow worker or trade union

official, to consider the new information prior to the reconvening of the disciplinary proceedings.

If a decision cannot be made immediately following the hearing, the employee will be advised in person, a further hearing scheduled and the employee advised of the date in writing (see 5.1).

As soon as possible after the conclusion of the disciplinary proceedings, and within five working days, the employee will be notified of the Panel's decision and what disciplinary action, if any, is to be taken. The decision will be confirmed in writing. The employee will be notified of his/her right of appeal under this procedure.

## **7. Disciplinary Action**

Where, following a disciplinary hearing, the Panel establishes that the employee has committed a disciplinary offence, disciplinary action may be taken. This will be set out in writing and the following principles will apply:

- (i) the letter will set out the nature of the offence committed;
- (ii) the employee will be informed that further misconduct is liable to result in further disciplinary action under this procedure;
- (iii) the letter will specify the period of time that the warning will remain on file, after such period the Council will review the warning, or the warning will automatically lapse; and
- (iv) state that the employee may appeal against the warning.

### **(a) Verbal Warning**

Where a minor offence, or offences, have been committed, a recorded verbal warning may be given. The warning will ordinarily state that any further misconduct will render the employee liable to further, more severe disciplinary action. The employee will be advised in writing that the warning will remain on their file for a period of nine months, or some other time as specified. During this period, the Council may rely on such a warning in the event of further misconduct on the part of the employee.

### **(b) First Written Warning**

Where:

- (i) either a more serious disciplinary offence has been committed; or
- (ii) or further minor offences have been committed by an employee following a recorded verbal warning that remains 'live,'

the employee will receive a first written warning. The warning will remain on file for a period of twelve months, or some other time as specified.

### **(c) Final Written Warning**

Where:

- (i) a serious disciplinary offence amounting to gross misconduct has been committed, thereby justifying summary dismissal, but the Panel decides, after taking into account all appropriate circumstances, that a lesser penalty is appropriate; or
- (ii) where an act of serious misconduct has been committed; or
- (iii) where an employee commits further disciplinary offences after a first written warning has been issued and remains 'live,'

a final written warning may be given. Such a warning will remain on the employee's file for a period of fifteen months, or some other time as specified.

#### **(d) Dismissal**

Where the employee has committed further acts of misconduct (these being acts of misconduct other than gross misconduct) following a final written warning given under (c) above, the employee may be dismissed with notice, or with pay in lieu of notice.

#### **(e) Summary Dismissal**

Where the Panel establishes that an employee has committed an act of gross misconduct, the employee may be summarily dismissed without notice, or pay in lieu of notice.

#### **(f) Other Sanctions**

Where a warning is given to an employee under (a) - (c) above, the Panel, after discussion with the Human Resources Manager, may also impose on the employee:

- (i) disciplinary suspension;
- (ii) demotion;
- (iii) transfer to a job of a lower status.

The foregoing sanctions may be imposed in conjunction with other forms of disciplinary action, or as an alternative to dismissal. Where it is an alternative to dismissal, it will be accompanied by a final written warning, or with confirmation of a previous warning, as appropriate.

## **8. Appeal**

An employee may appeal against any formal disciplinary sanction imposed against him/her.

The appeal should be made in writing to the Human Resources Manager within ten working days of the notification of the sanction being received.

When lodging an appeal, the employee should state:

- (a) the grounds of appeal; and
- (b) whether he/she is appealing against the finding that he/she has committed the alleged act or acts of misconduct, **or** against the level of disciplinary sanction imposed, **or** both.



Appeal hearings will take place within 10 working days of receipt of the employee's written notice of appeal, where reasonably practicable.

The appeal will normally be heard by a more senior manager than the manager that heard the original hearing, appointed by the Human Resources Manager, who has not been involved in the decision to impose the disciplinary sanction on the employee.

The senior manager is obliged to consider any representations made by the employee, the employee's work companion, or trade union official, as well as those of the manager who conducted the investigation and the manager who conducted the disciplinary hearing and imposed the disciplinary sanction.

The senior manager hearing the appeal must decide on the basis of both sets of representations, together with any subsequent facts that may have come to light, whether to uphold the disciplinary sanction. In the event that the senior manager finds for the employee, the senior manager shall allow the appeal and shall remove all records of the disciplinary sanction from the employee's record. In the event that the senior manager does not accept the representations made by, or on behalf of, the employee, the senior manager must uphold the disciplinary sanction. If however, a different level of sanction is considered appropriate in place of that originally imposed, the new sanction will remain on file for such time as specified.

Upon completion of the appeal, the senior manager conducting the hearing will convey his/her decision to the employee. The Council's decision at the appeal is final and no further right of appeal against the decision is available to the employee within the Council's procedures. The decision will be confirmed in writing within 10 working days.

Where an appeal lies against a dismissal by the Panel, the Panel's decision to dismiss will have had immediate effect and, therefore, if the dismissal is by notice, the period of notice will already have commenced on the date that the decision was given by the Panel. If the appeal is upheld, the employee will be notified accordingly and will be reinstated in their original job, or one rated as equivalent (if the dismissal has already taken effect and the employee's original job is no longer available) with their seniority, continuity of employment, and other benefits intact. Any loss of pay between the time of the employee's dismissal and reinstatement will also be made good.

## **9. Trade Union Representatives**

If an employee who is an accredited representative of a trade union recognised by the Council for collective bargaining purposes is suspected of having committed a disciplinary offence, the Council will take no action under this procedure (with the exception of suspending the employee in a case of suspected or known gross misconduct) until the Council has had a chance to discuss the matter with a full-time official of that trade union.

## **10. The Right to be Accompanied**

Employees have a statutory right to be accompanied at a disciplinary hearing by a trade union representative or work colleague. A union representative must have been certified by their union as being able to accompany their member. The request to be accompanied does not have to be in writing, but the employee should inform the manager of who will accompany them before the hearing.

If the companion cannot attend the hearing on the proposed date, the employee can propose an alternative date, so long as it is reasonable and is no more than 5 working days after the original date.

When choosing a companion, employees should bear in mind that it is not reasonable to insist on being accompanied by a colleague whose presence would prejudice the hearing, or who might have a conflict of interest. Where a suitably qualified person is available on the site where the employee is based, it may not be reasonable for the employee to ask to be accompanied by a colleague from a geographically remote location.

An employee who has agreed to accompany a colleague employed by the Council is entitled to take a reasonable amount of paid time off to fulfil that responsibility.

## **11. Criminal Offences**

Charges brought against a Council employee by third parties, including the police (including any investigations by the police) are procedurally separate from the Council's disciplinary procedure.

Action may be taken by management, irrespective of the outcome of such an investigation or charge. It is for the manager, in consultation with the Human Resources Section, to consider such cases on their merits and decide whether the offence has enough material bearing on the individual's suitability as an employee to warrant disciplinary action.

**Any decision to investigate the matter under the disciplinary procedure will depend on the nature of the offence, the occupation of the employee and the potential impact upon the Council's business.**

## **12. Policy Review**

This procedure will be periodically reviewed, as determined by the needs of the Council, changes in employment law and best practice. Any amendment to it will be advised to employees by the Human Resources Section and such advice will inform employees as to the date when any amendment comes into effect.

## **13. Legislation**

These procedures are in accordance with the Employment Bill 2008 and the ACAS Statutory Code of Practice on Discipline and Grievance..

In event that any conflict should arise between the statutory procedures and the Council's own approved disciplinary and grievance procedures, the statutory procedures will prevail.

## **See Also**

### **Performance Management**

Grievance Policy

Capability Policy

Code of Conduct

Investigation Procedure

Management Guidance – Performance Management

**Starting Work at DDC**

Recruitment & Selection

Probation

Best Practice