



Grange-over-Sands Town Council

Disciplinary Policy and Procedure

May 2021

1. About this Policy

- 1.1. This policy is based on and complies with the ACAS Code of Practice and Guidance on Discipline and Grievances at work.
- 1.2. The policy is designed to help you improve unsatisfactory conduct in your job. Wherever possible, we will try to resolve our concerns about your behaviour informally, without starting the formal procedure set out below. The standards of conduct expected of all employees are set out in the Disciplinary Rules which are contained in this Staff Handbook.
- 1.3. It is our policy to ensure that any disciplinary matter is dealt with fairly, consistently and in accordance with the Equality Act 2010 and that steps are taken to establish the facts and to give you the opportunity to respond before taking any formal action. The procedure applies to all employees regardless of length of service. It does not apply to agency workers or self-employed contractors.
- 1.4. This procedure is used to deal with misconduct. It does not apply to cases involving genuine sickness absence or poor performance. In those cases, reference should be made to the appropriate policy or procedure in this Staff Handbook.
- 1.5. This procedure does not form part of any employee's contract of employment, and it may be amended at any time. We may also vary this procedure, including any time limits, as appropriate in any case.

2. Minor conduct issues

- 2.1. Informal coaching and supervision will be considered, where appropriate, to improve conduct and/or attendance and minor conduct issues can often be resolved informally between you and your line manager. These discussions should be held in private and without undue delay whenever there is cause for concern. Where appropriate, a note of any such informal discussions may be placed on your personnel file but will be ignored for the purposes of any future disciplinary hearings. In some cases, an informal verbal warning may be given, which will not form part of your disciplinary records. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).
- 2.2. If you have difficulty at any stage of the procedure because of a disability, you should discuss the situation with your line manager as soon as possible.

3. Confidentiality

- 3.1. Our aim is to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.
- 3.2. You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings. Any breach of this requirement will be dealt with as a disciplinary matter, unless it has been agreed that allowing you to record a meeting is a reasonable adjustment in accordance with the provisions of the Equality Act 2010.
- 3.3. You will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against you, unless we believe that a witness's identity should remain confidential.

4. Investigations

- 4.1. The purpose of an investigation is for us to establish a fair and balanced view of the facts relating to any disciplinary allegations against you, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from you and any witnesses, and/or reviewing relevant documents.
- 4.2. If your manager believes there may be a disciplinary case to answer, we may initiate a more detailed investigation to establish the facts of a situation or to establish the perspective of others who may have witnessed misconduct.
- 4.3. Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held. You must co-operate fully and promptly in any investigation. This will include informing us of the names of any relevant witnesses, disclosing any relevant documents to us and attending investigative interviews if required.
- 4.4. If a formal disciplinary investigation is required, the Council's Staffing Committee will appoint an Investigator who will be responsible for undertaking a fact-finding exercise to collect all relevant information. The Investigator will be independent and will normally be a councillor. If the Staffing Committee considers that there are no councillors who are independent (for example, because they all have direct involvement in the allegations about the employee), it will appoint someone from outside the Council. The Investigator will be appointed as soon as possible after the allegations have been made. The Staffing Committee will inform the Investigator of the terms of reference of the investigation. The terms of reference should specify:

- The allegations or events that the investigation is required to examine.
 - Whether a recommendation is required.
 - How the findings should be presented. For example, an investigator will often be required to present the findings in the form of a written report.
 - Who the findings should be reported to and who to contact for further direction if unexpected issues arise or advice is needed.
- 4.5. The Investigator will be asked to submit their findings within 20 working days of appointment where reasonably possible. In cases of allegations of minor misconduct, the appointment of an investigator may not be necessary, and we may decide to commence disciplinary proceedings at the next stage - the disciplinary hearing (see paragraph 7).
- 4.6. The Staffing Committee will notify you in writing of the alleged misconduct and details of the person undertaking the investigation. You may be asked to meet the Investigator as part of the disciplinary investigation. You will be given sufficient notice of the meeting with the Investigator so that you have reasonable time to prepare for it. The letter will explain the investigatory process and that the meeting is part of that process. You will be provided with a copy of the Council's disciplinary procedure. We will also inform you that when you meet with the Investigator, you will have the opportunity to comment on the allegations of misconduct.
- 4.7. Employees may be accompanied or represented by a workplace colleague, a trade union representative or a trade union official at any investigatory meeting.
- 4.8. If there are other persons (e.g., employees, councillors, members of the public or the Council's contractors) who can provide relevant information, the Investigator should try to obtain it from them in advance of the meeting with you.
- 4.9. The Investigator has no authority to take disciplinary action. Their role is to establish the facts of the case as quickly as possible and prepare a report that recommends to the Staffing Committee whether or not disciplinary action should be considered under the policy.
- 4.10. The Investigator's report will contain their recommendations and the findings on which they were based. They will recommend either:
- You have no case to answer and there should be no further action under the Council's disciplinary procedure.
 - The matter is not serious enough to justify further use of the disciplinary procedure and can be dealt with informally, or
 - You have a case to answer, and a formal hearing should be convened under the Council's disciplinary procedure.
- 4.11. The Investigator will submit the report to the Staffing Committee which will decide whether further action will be taken.
- 4.12. If the Council decides that it will not take disciplinary action, it may consider whether mediation would be appropriate in the circumstances.

5. Criminal allegations

- 5.1. Where your conduct is the subject of a criminal investigation, charge or conviction the Council will investigate the facts before deciding whether to take formal disciplinary action.
- 5.2. The Council will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where you are unable or have been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, we may have to take a decision based on the available evidence.
- 5.3. A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if we consider that it is relevant to your employment.

6. Suspension

- 6.1. In some circumstances we may need to suspend you from work. The suspension will be for no longer than is necessary to investigate any allegations of misconduct against you or so long as is otherwise reasonable while any disciplinary procedure against you is outstanding. We will confirm the arrangements to you in writing. While suspended you should not visit our premises or contact any of our clients, customers, suppliers, contractors or staff, unless you have been authorised to do so. We will make arrangements for you to access any information or documents that you reasonably require to respond to any allegations.
- 6.2. While on suspension, you are required to be available during normal hours of work in the event that we need to make contact.
- 6.3. You must not contact or attempt to contact or influence anyone connected with the investigation in any way or to discuss this matter with any other employee or councillor
- 6.4. Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. Subject to the terms of your contract, you will continue to receive your full basic salary and benefits during the period of suspension.

7. The Disciplinary Hearing

- 7.1. Following any investigation, if the Staffing Committee decides that there is a case to answer, it will appoint a staffing sub-committee of three Councillors, to formally hear the allegations. The staffing sub-committee will appoint a Chairperson from one of its members. The Investigator shall not sit on the sub-committee.
- 7.2. No councillor with direct involvement in the matter shall be appointed to the sub-committee. You will be invited, in writing, to attend a disciplinary meeting. The sub-committee's letter will confirm the following:
 - The names of its Chairperson and other two members.
 - Details of the alleged misconduct, its possible consequences and the employee's statutory right to be accompanied at the meeting.
 - A copy of the information provided to the sub-committee which may include the investigation report, supporting evidence and a copy of the Council's disciplinary procedure.

- A copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality.
- The time and date for the hearing. The hearing will be held as soon as reasonably practicable, but you will be given reasonable notice of the hearing, usually two to seven days, so that you have sufficient time to prepare your case based on the information the Council has given you.
- That witnesses may attend on your and the Council's behalf and that both parties should inform the other of their witnesses' names at least two working days before the hearing.
- The you have the right to be accompanied at the hearing in accordance with clause 8.

8. Right to be accompanied

- 8.1. You may bring a companion to any investigatory, disciplinary hearing or appeal hearing under this procedure. The companion may be either a trade union representative or a colleague. You must tell us who your chosen companion is, in good time before the hearing.
- 8.2. The companion is permitted to address such meetings/hearings, to put your case and to confer with you. The companion cannot answer questions put to you, address the meeting/hearing against your wishes or prevent you from explaining your case.
- 8.3. A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.
- 8.4 If your companion is unavailable at the time a meeting is scheduled and will not be available for more than five working days afterwards, we may ask you to choose someone else.
- 8.5 We may, at our discretion, allow you to bring a companion who is not a colleague or union representative (for example, a member of your family) if this will help overcome a disability, or if you have difficulty understanding English.
- 8.6 You are expected to make reasonable efforts to attend any meetings/hearings and a failure to attend may result in us proceeding and/or reaching a decision in your absence.

9. Procedure at disciplinary hearings

- 9.1. If you or your companion cannot attend the hearing you should inform us immediately and we will arrange an alternative time. You must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If you fail to attend without good reason or are persistently unable to do so (for example for health reasons), we may have to take a decision based on the available evidence.
- 9.2. The purpose of the disciplinary hearing is for the allegations to be put to you and then to allow you the opportunity to give your perspective.
- 9.3. The disciplinary hearing will be conducted as follows:
- The Chairperson will introduce the members of the sub-committee to you and explain arrangements for the hearing.
 - The Chairperson will set out the allegations and invite the investigator to present the findings of the investigation report (if there has been a previous investigation) and where

there is no investigation report the investigator will provide a verbal summary of the allegations.

- The Chairperson will then invite you to present your account.
- You (or your companion) will set out your case and present evidence (including any witnesses and/or witness statements).
- Any member of the sub-committee, you (or your companion) may question the investigator, and any witness. Any member of the sub-committee can ask you questions.
- You (or your companion) will have the opportunity to sum up.

9.4. You may ask relevant witnesses to appear at the hearing, provided you give us sufficient notice (usually at least two working days) to arrange their attendance. You will be given the opportunity to respond to any information given by a witness.

9.5. We may adjourn the disciplinary hearing if we need to carry out any further investigations such as re-interviewing witnesses in the light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

9.6. The Chairperson will inform you in writing of the sub-committee's decision and their reasons for it, usually within 10 days of the disciplinary hearing and you will be notified of your right to appeal the decision.

10. Disciplinary penalties

10.1. The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. We aim to treat all employees fairly and consistently.

10.2. You will not normally be dismissed for a first act of misconduct, unless we decide it amounts to gross misconduct or you have not yet completed your probationary period.

10.3. **Stage 1 - First written warning.** A first written warning will usually be appropriate for a first act of misconduct where there are no other active written warnings on your disciplinary record. A first written warning will set out:

- The reason for the written warning, the improvement required (if appropriate) and the time period for improvement.
- That further misconduct will result in more serious disciplinary action.
- Your right to appeal.
- That a note confirming the written warning will be placed on your personnel file, that a copy will be provided to you and that the warning will remain in force for a specified period of time (e.g., 12 months).

10.4. **Stage 2 - Final written warning** - A final written warning will usually be appropriate for:

- a. misconduct where there is already an active written warning on your record; or
- b. misconduct that we consider sufficiently serious to warrant a final written warning even though there are no other active warnings on your record.
- c. A final written warning will set out:
 - The reason for the final written warning, the improvement required (if appropriate) and the time period for improvement.

- That further misconduct will result in more serious disciplinary action up to and including dismissal.
- Your right of appeal.
- That a note confirming the final written warning will be placed on your personnel file, that a copy will be provided to you and that the warning will remain in force for a specified period of time (e.g.,12 months).

10.5. **Stage 3 – Dismissal** - Dismissal will usually only be appropriate for:

- a. any misconduct during your probationary period.
- b. further misconduct where there is an active final written warning on your record; or
- c. any gross misconduct regardless of whether there are active warnings on your record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal). Examples of gross misconduct are set out in our Disciplinary Rules, which are in this Staff Handbook.

10.6. The Council will consider very carefully a decision to dismiss. If you are dismissed, you will receive a written statement of the reasons for dismissal, the date on which your employment will end and details of your right of appeal.

10.7. In some cases, we may at our discretion (but only if your contract allows for such an alternative sanction) consider alternatives to dismissal. These will usually be accompanied by a final written warning. Examples include:

- Demotion.
- Transfer to another department or job.
- A period of suspension without pay.
- Loss of seniority.
- Reduction in pay.
- Loss of future pay increment or bonus.
- Loss of overtime.

10.8. Action taken as a result of a disciplinary hearing will remain in force for the stated time period unless it is modified as a result of an appeal.

10.9. If the sub-committee decides that no disciplinary action should be taken, then no record of the matter will be retained in your personnel file.

11. Effect of a warning

- 11.1. Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that active period.
- 11.2. A first written warning will usually remain active for six months and a final written warning will usually remain active for 12 months. However, in cases of serious, repeat or persistent misconduct not justifying dismissal or where there is evidence that past warnings have not been heeded, it may be that an increased duration of warning is applied. Your conduct may be reviewed at the end of a warning's active period and if it has not improved sufficiently, we may decide to extend the active period.
- 11.3. After the active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

12. Appeals

- 12.1. If you feel that disciplinary action taken against you is wrong or unjust you should appeal in writing, stating your full grounds of appeal, to the person named in the outcome letter within one week of the date on which you were informed of the decision.
- 12.2. The grounds for appeal include:
- A failure by the Council to follow its disciplinary policy which you believe has resulted in some unfairness.
 - That the sub-committee's disciplinary decision was not supported by the evidence.
 - That the disciplinary action was too severe in the circumstances of the case.
 - That new evidence has come to light since the disciplinary hearing.
- 12.3. If you raise any new matters in your appeal, we may need to carry out further investigation. If any new information comes to light, we will provide you with a summary including, where appropriate, copies of additional relevant documents and witness statements. You will have a reasonable opportunity to consider this information before the hearing, and you or your companion may comment on any new evidence arising during the appeal before any decision is taken.
- 12.4. We will give you written notice of the date, time and place of the appeal hearing. This will normally be two to seven days after you receive the written notice. You will be notified of your right to be accompanied in accordance with paragraph 8 above.
- 12.5. Where reasonably practicable, the appeal hearing will be conducted impartially by a panel of three members of the Staffing Committee who have not previously been involved in the case. There may be insufficient members of the staffing subcommittee who have not previously been involved, if so, the appeal panel will be a committee of three members of the Council who may include members of the Staffing Committee. The appeal panel will appoint a Chairperson from one of its members. The person who investigated the issue may also be present. We may also choose to have an HR representative in attendance.

- 12.6. At the appeal hearing, the Chairperson will:
- Introduce the panel members to you.
 - Explain the purpose of the meeting, which is to hear your reasons for appealing against the disciplinary decision.
 - Explain the action that the appeal panel may take.
- 12.7. You (or your companion) will be asked to explain your grounds of appeal.
- 12.8. We may adjourn the appeal hearing if we need to carry out any further investigations in the light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 12.9. At the conclusion of the appeal hearing (or any reconvened appeal hearing), the Chairperson will inform you that you will receive the decision and the panel's reasons in writing within 10 days of the appeal hearing. There will be no further right of appeal.
- 12.10. Following the appeal hearing we may:
- confirm the original decision of the Staffing Committee.
 - revoke the original decision of the Staffing Committee; or
 - substitute a less serious sanction.
- 12.11. If on appeal the panel decide that no disciplinary action was warranted, no record of the matter will be retained on your personnel file.
- 12.12. If an appeal against dismissal is upheld, you will be paid in full for the period from the date of dismissal and your continuity of service will be preserved.