

## DISCIPLINARY PROCEDURE

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### 1. Introduction

All employees are expected to follow any Council rules and regulations in place and provide a high level of conduct and performance to the Council, fellow employees, customers and suppliers. Where there are deficiencies the Council operates a disciplinary procedure as detailed below.

#### 1.1. Purpose and Scope

The Council's procedure applies to all employees apart from the exceptions below, and is designed to help and encourage them to achieve and maintain standards of conduct, attendance and job performance. The aim is to ensure consistent and fair treatment for all. This procedure is intended as a statement of the Council's current policy and commitment to operate a fair procedure in relation to all its employees taking into account relevant employment law and the recommendations of the Advisory Conciliation and Arbitration Service (ACAS) from time to time. The Council therefore reserves the right to amend the procedure as necessary to meet any changing requirements.

Without prejudice to the above, the procedure does not apply to:

- The Chief Executive and officers employed under the National conditions of Service for local authority chief officers.
- Employees employed on casual contracts.
- Temporary or fixed-term employees where the contract of employment is for 12 months or less.
- Termination during or at the end of a probationary period of service (including any extended probationary period of employment).
- Termination by mutual consent.

#### 1.2. Principles

The following guiding principles apply throughout the procedure:

- 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 him or her and will be given the opportunity to state his or her case before any decision is made.

- At every stage the employee will have the right to be accompanied at investigatory meetings and represented at disciplinary hearings by a work colleague or trade union representative.
- At all stages of the formal procedure, notice of any impending meetings will be sent in writing to the individual and will allow reasonable time for the individual to prepare.
- Although the same standards of conduct apply, no formal disciplinary action will be taken against a recognised trade union representative until a full-time official of the union concerned has been informed of the circumstances of the case.
- The employee must make reasonable effort to attend the meeting and if there is any difficulty, to notify the Council and agree a mutually acceptable date and venue to enable meetings to take place within an acceptable time of the issue being raised.
- If the employee fails to attend within a reasonable time then the Council will notify the employee, in writing, of the final date at which the meeting will take place and, if there is no acceptable response, will hold the disciplinary hearing or appeal in the absence of the employee. The employee's representative may attend and present the case on his/her behalf.
- Any written evidence relevant to the disciplinary process will be forwarded to the individual prior to any disciplinary hearing taking place.
- No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty will normally be dismissal without notice or payment in lieu of notice.
- 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.

### 1.3. Mediation

Mediation is an optional step to take in the disciplinary procedure and is normally more applicable to the resolution of grievances. However, there may be occasions where mediation may be beneficial but the following points should be borne in mind:

- In a disciplinary situation mediation is most likely to be applicable where there is a breakdown in relationships between two or more members of staff, including between an employee and his/her line manager, and possibly where there are accusations of bullying and harassment.



- The use of mediation is dependent on both or all parties being willing to participate.
- Mediation is not necessarily an alternative to taking informal or formal disciplinary action and indeed may be taken after, or in addition to, disciplinary action to try to resolve disputes and avoid further problems.
- If mediation is used during the course of the disciplinary process then the Authorised Officer will suspend the disciplinary process to allow for mediation. Such suspension should not unduly delay the disciplinary process.

A guide to mediation is included in Appendix 2 and this should be taken into account when deciding whether mediation is appropriate.

## 2. Informal Action

Managers are responsible for standards of performance of their staff and are encouraged to tackle problems at an early stage to try to correct any unacceptable performance or conduct before it becomes a serious concern. Such action is not a formal part of the disciplinary procedure but may be referred to if subsequent formal action becomes necessary. As such the following points should be borne in mind when taking informal action:

- The meeting must be in private and the employee given reasonable notice that the meeting will take place.
- As the meeting is not part of the formal procedure, there is no right to be accompanied or represented.
- Discussions will attempt to find the causes of the unacceptable performance or conduct and agree any action to be taken by the employee and, where appropriate, any support the Council can give to assist.
- If, during the meeting, it becomes apparent that the unacceptable performance or conduct is more serious than was first thought, or the employee is not receptive to advice or is uncooperative, then the manager will suspend the meeting and inform the employee that the matter will now be dealt with in the formal disciplinary procedure.
- The employee will be informed in writing of the findings of the meeting including any agreed action plans, standards to be achieved, time frame for improvement, and likely future reviews. A copy will be kept by the employer. The manager will keep a record of any documents used in the meeting and notes made.



### 3. Formal Action

Where informal action fails to bring about the required improvement, or when the misconduct or poor performance is considered to be more serious, then the formal stages of the disciplinary procedure will be followed.

#### 3.1. Authorised Officers

The minimum level of authority to take formal disciplinary decisions is as follows:

- Cases that may result in a Stage 1 written warning: Section Head
- Cases that may result in a Stage 2 final written warning: Head of Service
- Cases that may result in dismissal: Director

If when a case is being investigated it becomes apparent that it is more serious than first thought then the role of Authorised Officer will be transferred to a more senior officer. If it becomes apparent during a disciplinary hearing then the hearing will be adjourned and reconvened with an appropriate more senior officer.

#### 3.2. Investigation

##### 3.2.1 Standard Cases

An employee's supervisor or manager 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 and when it has been concluded.

##### 3.2.2 Complex or more serious Cases

Where the case is complex or potentially more serious e.g. where there is a complaint against an employee's manager or other member of staff; the case is extensive and involves witnesses across sections or externally; or the case may potentially be considered as gross misconduct, then the Authorised Officer will appoint an Investigating Officer who will be from a different service area to that of the employee(s) under investigation.

##### 3.2.3 Cases of Fraud or Corruption

Where it is suspected that there is a case of fraud or corruption then this will be dealt with under the Council's Anti-Fraud and Corruption Policy. The Investigating Officer will be appointed by the S.151 Officer and will normally be the Internal Audit Manager or an officer designated to act on his behalf. If it is found that there is a

case to answer then, irrespective of any external actions such as a criminal prosecution, internally the case will be handled under the disciplinary procedure and the report of the Investigating Officer will be used in that procedure.

### 3.2.4 Procedure during Investigation

Depending on the circumstances of the case, the employee may be invited to attend an investigatory interview. If such an interview is held prior to a disciplinary hearing, the employee will be informed at the outset that the interview is an investigatory interview. Statements will be produced as appropriate and employees will have the right to be accompanied at investigatory meetings by a fellow worker or trade union representative. Any documents relevant to the case will also be investigated or prepared.

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

Where an Investigating Officer is appointed, their role shall be to:

- Lead the investigation
- Assemble evidence
- Write a report making a judgement as to whether there is a case to answer
- If appropriate, recommend that the Authorised Officer conducts a disciplinary hearing. In this event a copy of the report will be made available to the individual under investigation and/or that individual's Trade Union.
- Present the management case at the hearing.

When interviewing the employee(s) under investigation the Investigating Officer must be accompanied by a witness: this may be a representative from Personnel.

### 3.3. Suspension During Investigation

Where it is believed that the matter to be investigated involves serious misconduct, the employee may be immediately suspended from work on full pay and contractual benefits. If serious misconduct is not initially suspected or believed to have occurred, but during the course of an investigation the person conducting it reasonably forms the opinion that a serious breach of discipline may have occurred, the employee who is the subject of the investigation may then be suspended.

Suspension may also take place when it is considered necessary to facilitate the investigation e.g. to avoid problems between members of staff or to prevent any interference with electronic or physical data, other evidence or witnesses.

The minimum level of authority to suspend is Head of Service. The suspension will be confirmed in writing within three working days and such written confirmation will

state that the nature of the suspension is precautionary, not disciplinary, pending the outcome of the disciplinary proceedings.

During suspension the employee will not be permitted to attend any Council place of work other than with the permission of the relevant senior manager or to attend arranged investigatory meetings or disciplinary hearing.

### 3.4. The Procedure

#### 3.4.1 Disciplinary Hearing

Once it is established that there is a case to answer, the employee will be informed in writing of the allegations and be invited to attend a disciplinary hearing giving at least 3 and up to 5 working days notice from receipt of the written notice, that will also state his/her right to representation. The employee will also receive copies of any documents or other evidence to be presented at the hearing and will be expected to provide the Council with any documents s/he proposes to present.

The hearing will take place in private before a panel consisting of the Authorised Officer and a Personnel representative. The panel will be chaired by the Authorised Officer, who in standard cases may be a manager in line authority of the employee(s) concerned. The panel will hear the evidence and decide what action to take. The panel may decide to appoint a person, usually an employee, to act as note taker. The note taker will not take an active role in the proceedings.

At the conclusion of the disciplinary hearing or as soon as possible thereafter, the Authorised Officer will convey the decision of the panel to the employee and will also inform the employee what disciplinary action, if any, is to be taken. The decision will be confirmed in writing within five working days of the hearing. The employee will be notified of his/her right of appeal under this procedure.

#### 3.4.2 General Misconduct and Unacceptable Performance

The following examples of misconduct and unacceptable performance are not exhaustive or exclusive:

- Bad time-keeping and irregular attendance; unreasonable or unauthorised absence, negligence, carelessness or recklessness; abusive behaviour or insolent language; lack of application and poor performance; damage to Council property; unreasonable refusal to follow an instruction issued by a manager or supervisor; breach of the Council Rules; breach of health and safety rules; general misuse or abuse of Council equipment and services, etc.

#### 3.4.3 Standard Disciplinary Action

Where, following a disciplinary hearing, the Council establishes that the employee has committed a disciplinary offence, the following disciplinary action may be taken:

- **Stage 1 – Written Warning**

If conduct or performance does not meet acceptable standards the employee will normally be given a formal written warning. The warning will ordinarily state that any further misconduct will render the employee liable to further, more severe disciplinary action. S/he will be advised in writing of the reason for the warning, that it is the first stage of the disciplinary procedure and of his or her right of appeal. A copy of this written warning will be kept on the employee's personal file but it will be disregarded for disciplinary purposes after one year, subject to satisfactory conduct and performance.

- **Stage 2 - Final Written Warning**

If there is a failure to improve and/or conduct or performance is still unsatisfactory, or if the misconduct is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal (in effect both first and final written warning), a final written warning will normally be given to the employee by the manager. 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 on the employee's personal file but it will be disregarded for disciplinary purposes after two years, subject to satisfactory conduct and performance.

Warnings will, as stated, normally be active for a period of one or two years. Under exceptional circumstances warnings may remain active for a longer period or even indefinitely. Such circumstances may be:

- Where it is evident that an employee is not making a consistent effort to improve and performance or conduct deteriorates again as soon as a warning is considered to be disregarded.
- Where there has been serious misconduct not sufficient to warrant summary dismissal under the gross misconduct ruling, possibly due to exceptional extenuating or mitigating circumstances, but where such performance or misconduct simply cannot be allowed to happen again. Examples, which are intended as illustrations and are not exhaustive or exclusive, may include threatening behaviour or serious breach of safety rules

Where warnings are for an extended time, this will be fully detailed in the warning letter or notification to the employee concerned.

- **Stage 3- Dismissal**

If conduct or performance is still unsatisfactory and the employee still fails to reach the prescribed standards, dismissal may result. The employee will be provided, as soon as reasonably practicable, with written reasons for dismissal, the date on which employment will terminate and details of the right of appeal.



### 3.4.4 Gross Misconduct

The following list provides examples of offences that are normally regarded as gross misconduct but they are not exhaustive or exclusive:

- stealing from the Council, members of staff or the public;
- other offences of dishonesty;
- falsification of a qualification that is a stated requirement of the employee's employment or results in financial gain to the employee;
- falsification of records, reports, accounts, expense claims or self-certification forms whether or not for personal gain;
- sexual misconduct at work;
- fighting with or physical assault on members of staff or the public;
- deliberate damage to or misuse of the Council's property;
- serious damage to the Council's property resulting from employee negligence;
- drunkenness or being under the influence of illegal drugs whilst at work;
- possession, custody or control of illegal drugs **at work and/or** 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 including the downloading, copying or storage of indecent, pornographic or grossly offensive or illegal images or data;
- gross negligence;
- conviction of a criminal offence that is relevant to the employee's employment or which harms the reputation of the Council;
- conduct that brings the Council's name into disrepute; and
- discrimination or harassment of a fellow worker on the grounds of sex, sexual orientation, race, disability, age or religion or belief.

If, on completion of the investigation and hearing, the Council is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

### 3.4.5 Other Disciplinary Sanctions

When an employee commits further disciplinary offences after a stage 1 written warning has been issued and it remains live, or a serious disciplinary offence amounting to gross misconduct has been committed, thereby justifying summary dismissal but the Council decides, after taking into account all appropriate circumstances that a lesser penalty is appropriate, then a final written warning will be issued and consideration given to other disciplinary sanctions which might include:

- Disciplinary suspension including stoppage of pay for such period as the Council thinks fit in the circumstances subject to a maximum of two weeks.

- Demotion or transfer to a post of lower status.
- Transfer to a post in another area if it is felt this will avoid future conflict or provide a 'fresh start' for the employee.

#### 4. Appeals

An employee who wishes to appeal against a formal disciplinary decision should do so giving the reasons in writing to the Head of Human Resources within five working days of receiving the written disciplinary or dismissal notification.

When lodging an appeal, the employee should state:

- the grounds of appeal; and
- 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.

Appeals will be heard by a panel of senior officers appointed by the Chief Executive chaired by a **Director** (not responsible for the employee who is appealing) a member of CMT and a Personnel representative not previously connected with the disciplinary case.

Appeals against dismissal will be conducted by the Council's Personnel Panel which will be provided with appropriate procedural and legal advice.

Upon completion of the appeal, the chair of the panel conducting the hearing will convey his/her decision to the employee. The Council's decision at the appeal is final. The decision will be confirmed in writing within five working days.

#### 5. General Notes

- 5.1. References to Head of Human Resources shall include any person acting on his/her behalf.
- 5.2. References to Personnel representative shall mean a person of at least Personnel Officer level or equivalent.
- 5.3. Where examples, including lists, are given these are intended to illustrate typical circumstances and are not exhaustive or exclusive.
- 5.4. If you need advice on the interpretation or use of this policy please contact the Personnel section.
- 5.5. **This procedure shall apply at all times that an employee is considered to be 'at work' as mentioned in places. For the avoidance of doubt, 'at work'**

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includes any time that an employee is carrying out duties under his/her contract of employment whether on Council premises or not.

Typical examples of being at work away from Council premises include:

- authorised travel whether by public transport, Council or private vehicle;
- attending meetings, conferences, enquiries, legal proceedings etc on behalf of or representing the Council;
- attending approved training and college courses;
- performing work which is partly or mainly carried out in public areas or on the premises of another party including home visits
- homeworking

### **Equality and Diversity Statement**

South Hams District Council is committed to promoting equality and valuing diversity in everything we do including service delivery and employment. Further details can be obtained by referring to the Equality and Diversity in Employment Policy Statement in the Personnel and Payroll Manual.



### Appendix A – Order of Proceedings for Disciplinary and Appeal Hearings

#### 1. Disciplinary Hearing

The disciplinary hearing will be conducted by a panel consisting of the Authorised Officer, which for minor offences will normally be the line manager of the employee who is the subject of the hearing, and a Personnel representative. The Authorised Officer will lead the hearing (the chair) and the Personnel representative will **also** advise on any points of procedure and legal aspects.

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 to the disciplinary hearing. The employee will be entitled to be given a full explanation of the case against him/her and be informed of the content of any statements provided by witnesses. The employee will also be entitled to state his/her case in response to the Council's case and put forward an explanation of his/her conduct and/or mitigating factors.

The following **typical** procedure will then be followed:

- The person leading the hearing (the chair) will introduce the hearing, and explain its purpose and how it will be conducted. The purpose of the hearing will normally be to establish the facts and determine, on conclusion of the hearing, whether the Council has proper grounds to take disciplinary action against the employee and, if so, the level of such disciplinary action.
- The parties present at the hearing will introduce themselves and confirm their respective roles in the hearing. The employee will be entitled to be accompanied, if he/she wishes, by a fellow worker or trade union official of his/her choice.
- The chair will state whether the hearing is being conducted as part of the Council's disciplinary procedure, and confirm that a written record of the hearing will be made.
- The chair will state whether any witnesses have been asked to give evidence at the hearing, and if so, who they are.
- The chair, or the Investigating Officer as appropriate, will explain fully the Council's case, i.e. the employee's alleged or suspected misconduct or unsatisfactory performance or other circumstance leading to the possibility of disciplinary action being taken against him/her. All the relevant facts will be put to the employee, with specific examples of relevant incidents being given where possible.
- Where evidence has been obtained from third parties in the form of written statements, either the statements themselves or a summary of their content



will be given to the employee. The Council reserves the right, however, to conceal the identity of the parties who provided this evidence if it thinks it is necessary or appropriate to do so.

- Any witnesses whom the Council has decided to call will be called into the hearing and asked to state their evidence in front of the parties.
- The employee or his/her representative will be allowed a full opportunity to question the chair on the Council's case, to question any witnesses and to challenge the content of any witness statements.
- The employee will be allowed a full and fair opportunity to state his/her side of events, explain his/her conduct or performance and state any mitigating factors. He/she may do this personally, or the employee's representative (if he/she has elected to be represented) may do this on his/her behalf.
- The **panel** will question the employee on his/her evidence. Although the employee may confer with his/her representative at any time during the hearing on request, the chair has the right to ask the employee personally to answer any questions put to him/her.
- The **panel** will take into account any mitigating factors put forward by the employee when subsequently making a decision about whether or not to impose a disciplinary penalty, and the level of any such penalty.
- The chair will sum up the key points of the hearing.
- The chair will inform the employee of the outcome of the hearing including any disciplinary penalty or if no immediate decision is made then when a decision will be made on whether to impose a disciplinary penalty on the employee.
- The chair will inform the employee that he/she will have the right to appeal against any disciplinary penalty imposed on him/her.

The chair will close the meeting.

## 2. Appeal Hearing

Appeals will be heard by a panel of senior officers appointed by the Chief Executive chaired by a **Director** (not responsible for the employee who is appealing) a member of CMT and a Personnel representative not previously connected with the disciplinary case.

Appeals against dismissal will be to the Personnel Panel who will be provided with appropriate procedural and legal advice normally by the Head of Human Resources.



The Authorised Officer and Personnel representative who formed the original disciplinary panel will attend the appeal meeting and present the management case. The Investigating Officer, where applicable, will also attend.

An Appeal Hearing is not designed to re-hear the case but to examine the grounds of appeal. The appellant must be specific about the grounds of the appeal; these will effectively form the agenda for the hearing. Appeals will be raised on one **or more** of the following grounds:

- the procedure: a failure to follow procedure had a material effect on the decision
- the decision - the evidence did not support the conclusion reached
- the penalty - was too severe given the circumstances of the case
- new evidence - which has genuinely come to light since the first hearing.

The general format of the appeal hearing will be similar to that of the disciplinary hearing and the following **typical** procedure will be adopted:

- The chair will explain the purpose of the meeting and the parties will introduce themselves.
- The employee (or representative) will be asked to put forward the appeal, including any documentary evidence and may question any witnesses.
- The Authorised Officer **and Personnel representative from the original disciplinary panel** may question the employee and witnesses.
- The **Appeal** Panel may question the employee and witnesses.
- The Authorised Officer will present the management case, **supported as necessary by his/her Personnel representative and Investigating Officer if applicable**, including any documentary evidence and will question witnesses.
- The employee (or representative) may question the Authorised Officer and witnesses.
- The **Appeal** Panel may question the Authorised Officer and witnesses.
- The Authorised Officer may sum up the management case.
- The employee or representative may sum up the employee's case.
- The parties will withdraw, leaving the Panel and independent advisor to deliberate.
- If it is necessary for the Panel to seek clarification on any point, both the employee and his/her representative and the Authorised Officer will be invited to return.

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- When the Panel has reached a decision, both the employee and his/her representative and the Authorised Officer and Personnel representative will be invited to return to hear the decision announced. If the appeal panel requires longer to consider its verdict then the parties will be informed of this and when a decision will be made and notified.
- The appellant will be advised in writing of the outcome of the appeal within five working days of the hearing. Where the appeal panel requires longer to consider its verdict then this time may be extended but will still be within 5 working days wherever possible.

The decision of the Appeal Panel will be final on behalf of the Council



### Appendix 2 – A Guide to Mediation

The following guide is essentially as provided by ACAS. When considering whether and how to use mediation this guide will provide the general principles and points to consider but final arrangements will depend on the circumstances and any agreement reached between the Authorised Officer and the parties concerned.

#### The Guide

An independent third party or mediator can sometimes help resolve disciplinary or grievance issues. Mediation is a voluntary process where the mediator helps two or more people in dispute to attempt to reach an agreement. Any agreement comes from those in dispute, not from the mediator. The mediator is not there to judge, to say one person is right and the other wrong, or to tell those involved in the mediation what they should do. The mediator is in charge of the process of seeking to resolve the problem but not the outcome.

Mediators may be employees trained and accredited by an external mediation service who act as internal mediators in addition to their day jobs. Or they may be from an external mediation provider. They can work individually or in pairs as co-mediators.

There are no hard-and-fast rules for when mediation is appropriate but it can be used:

- for conflict involving colleagues of a similar job or grade, or between a line manager and their staff
- at any stage in the conflict as long as any ongoing formal procedures are put in abeyance, or where mediation is included as a stage in the procedures themselves
- to rebuild relationships after a formal dispute has been resolved
- to address a range of issues, including relationship breakdown, personality clashes, communication problems, bullying and harassment.

Grievances most obviously lend themselves to the possibility of mediation. Managers may not always see it as appropriate to surrender their discretion in relation to disciplinary issues where they believe a point of principle is at stake, such as misconduct or poor performance. However, disciplinary and grievance issues can become blurred, and the employer may prefer to tackle the underlying relationship issues by means of mediation.

### Cases unsuitable for mediation

Mediation may not be suitable if:

- used as a first resort – because people should be encouraged to speak to each other and talk to their manager before they seek a solution via mediation
- it is used by a manager to avoid their managerial responsibilities
- a decision about right or wrong is needed, for example where there is possible criminal activity
- the individual bringing a discrimination or harassment case wants it investigated

