



**APPENDIX 'C8'**

**EAST HERTS COUNCIL**

**DISCIPLINARY POLICY AND PROCEDURE**

**MAY 2006**

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## **1. Purpose**

- 1.1 The Council's Disciplinary Procedure has been established to help and encourage all employees to achieve and maintain appropriate standards of conduct in support of its Vision Statement and Corporate Priorities and Targets.
- 1.2 This updated Disciplinary Procedure takes account of the Employment Act 2002 (Dispute Resolution) Regulation 2004 and has been designed to uphold the principles of natural justice. (Other legislation relevant to this procedure is the Employment Act 1999.)

## **2. Setting and Maintaining Standards**

- 2.1 An important responsibility for managers is to take a lead in setting acceptable standards of behaviour, to give staff a clear sense of purpose and guidance in carrying out their duties satisfactorily.
- 2.2 There will be occasions where managers need to give staff support in the form of coaching or informal counselling to ensure that acceptable standards are maintained, thus reducing or eliminating altogether the need for formal action.
- 2.3 In instances where it has been necessary to give an informal warning, the manager will normally make a personal note of the discussion and any agreed future action.
- 2.4 Where informal counselling is not considered appropriate, or if after an informal warning an employee fails to improve or to maintain improvement, the formal Disciplinary Procedure will be applied.

### **3. Principles of the Procedure**

- 3.1 No formal disciplinary action will be taken against an employee until the situation has been fully investigated.
- 3.2 At every stage in the disciplinary procedure, the employee will be advised of the nature of the complaint against him/her and will be given the opportunity to prepare and state their case before any decision is made.
- 3.3 At all stages, including investigatory meetings, the employee will have the right to be accompanied by a union representative, work colleague or other companion. If the employee chooses to be accompanied by a companion, they must make it clear who the companion will be and what their role will be prior to any meetings taking place.
- 3.4 Management will be supported by Human Resources.
- 3.5 An employee will not normally be dismissed for an initial act of misconduct, except in cases of gross misconduct.
- 3.6 At any stage of the Disciplinary Procedure, the employee may be suspended on full pay whilst the circumstances of the case are investigated. In case of possible gross misconduct, suspension will normally occur.
- 3.7 The employee will have the right to appeal against any disciplinary sanction imposed.
- 3.8 Managers should consult Human Resources for guidance on the use of this procedure to ensure consistency of approach.
- 3.9 If a grievance is raised that relates to a case under investigation management will give consideration to suspending the investigation until the grievance has been dealt with. The decision in such situations will be made on a case by case basis and will be at the discretion of management.

- 3.10 The Council is committed to ensuring equality in all its dealings with staff. Therefore managers should consider whether an employee requires additional support

#### **4. Scope of the Procedure**

- 4.1 The procedure does not apply to employees at chief officer level and above.
- 4.2 The Procedure should be used to address concerns over the conduct of employees where informal means are inappropriate or have failed.
- 4.3 The procedure complies with the statutory duty to protect the employee against unfair disciplinary measures whilst enabling managers to fulfil their responsibility to manage their services.
- 4.4 For issues relating to performance or attendance the Capability Procedure should be used.
- 4.5 The procedure will not apply where an employee's services are terminated in the following situations:-
- 4.5.1 At the end of a pre-determined limited or fixed term contract;
  - 4.5.2 Redundancy;
  - 4.5.3 Where continuation of employment would contravene a duty or restriction imposed by statute e.g. expiry of a work permit.
  - 4.5.4 Retirement.

In the above examples separate procedures would apply.

## **5. Definitions of Misconduct**

- 5.1 The Council's Code of Conduct sets out standards of conduct expected of officers. Breaches of these standards are likely to constitute misconduct or gross misconduct.
- 5.2 Detailed examples of misconduct and gross misconduct appear in Appendix 2.

## **6. Investigation of Complaints or Allegations**

- 6.1 Managers seeking to move to formal disciplinary action must ensure that they have investigated the matter thoroughly and promptly.
- 6.2 **Suspension: Suspension should be avoided if possible and temporary redeployment into a different service should be considered as an alternative.**
- 6.3 However, it may be necessary to suspend the employee and this will be dependent upon:
- the gravity of the allegation
  - the potential of the employee concerned to impede a proper investigation
  - a risk to the health and safety of other employees or the public/a risk to council property
- 6.4 Such action will not be taken lightly and will only be made with the approval of the departmental director. It will be considered a neutral act which can be lifted at any point during the investigation.
- 6.5 The employee must be advised of how long the suspension will apply and if necessary a letter must be sent out if it is necessary to extend the period of suspension.

- 6.6 At time of suspension the investigating officer should instruct the employee to handover security passes, keys, Council equipment and be advised that they should not make direct contact with colleagues or visit the council offices except with the express permission of the investigating officer.
- 6.7 It is important the investigation is carried out as quickly as possible so that recollections of witnesses are factual and clear and to minimise the level of worry experienced by the employee under investigation.

## **7. Record Keeping**

- 7.1 Records must be kept of the investigation as documentation is required if formal action is taken. This is important for both management and employees.

## **8. The Disciplinary Procedure**

- 8.1 This procedure should be invoked only when there has been no improvement through informal methods or when a serious situation has occurred where an informal approach would be inappropriate. Advice should be obtained from Human Resources if and when managers believe this point has been reached.
- 8.2 Guidance on the conduct of disciplinary hearings is set out in Appendix 1. Guidance on who is responsible for hearing a case at each stage is set out in 14 below.

### **8.3 Stage 1**

The commencement of the formal process will depend upon the seriousness of the misconduct.

Either

- 8.3.1 At the conclusion of the disciplinary meeting, called as part of the investigation, the investigating officer may issue a verbal warning;

or

8.3.2 Following completion of an investigation, the investigating officer will refer the matter to Hearing Officer Stage 2 to hear the case.

#### 8.4 Stage 2

The Hearing Officer Stage 2 will arrange a meeting to hear the case and will write to the employee setting out the allegations. The letter will state whether the allegation constitutes misconduct or gross misconduct and whether dismissal is contemplated.

8.5 The management statement setting out the details of the case which led to formal disciplinary action will be included with the letter.

8.5.1 The management statement should include a recommendation on an appropriate sanction.

8.5.2 The employee and management may be accompanied as set out in 2.3 and 2.4 above.

8.5.3 The employee will be advised of the outcome of the hearing by the Hearing Officer Stage 2 within the timescales set out in 9. below and of the right to appeal against the decision if they are not satisfied with it.

#### 8.6 Stage 3

8.6.1 If the employee wishes to appeal they must do so in writing within the timescales set out in 9. below, stating the grounds for the appeal.

The Hearing Officer Stage 2 will then:

**either**

8.6.2 Hear the appeal against the verbal warning;

**or**

8.6.3 Refer the matter to the Hearing Officer Stage 3 who will arrange an appeal hearing.



- 8.6.4 Further evidence may be introduced by either side *if* it is relevant to the grounds for the appeal.
- 8.6.5 The appeal hearing will follow the format of the stage 2 hearing and the decision of the Hearing Officer Stage 3 will be set out in writing.
- 8.6.6 The appeal hearing will not have to take place before the sanction given at stage 2 takes effect.

## **9. Attendance at Hearings**

- 9.1 If the date set for a meeting is not convenient for the employee's companion, the employee should suggest an alternative date within 5 working days of the date set for the meeting, unless agreement is obtained on both sides to alter this requirement.
- 9.2 If the employee fails to offer an alternative date within 5 working days of the date set for the meeting the manager will set the time and date of the meeting, which will proceed without the employee's companion if they are unable to attend.
- 9.3 The employee must take all reasonable steps to attend the hearing and must provide a medical certificate if they are unable to attend due to sickness. Under these circumstances management will offer a second date.
- 9.4 If the employee fails to attend, does not provide a medical certificate or is unable to provide a good reason for non-attendance, the investigating officer/hearing officer Stage 2 will consider the management case together with any documentation submitted by the employee in his/her absence.
- 9.5 The investigating officer/Hearing Officer Stage 2 will write to the employee giving a decision on whether the allegation is proven or not and the reasons.
- 9.6 Where proven, the sanction and right of appeal will be set out.

- 9.7 The employee must exercise his/her right of appeal within 7 working days of the date of the letter advising of the outcome.
- 9.8 The appeal will follow the procedure as set out in 8.6.1. to 8.6.6. above.

**10. Sanctions**

- 10.1 The disciplinary sanction will depend on the seriousness of the misconduct and an employee will not normally be dismissed for an initial act of misconduct, except in cases of gross misconduct.
- 10.2 Verbal, first written and final written warnings can be issued. A verbal or first written warning need not be issued before a final written warning is given.
- 10.3 It will be for the senior officer hearing the case to decide on the severity of the sanction, with the assistance of Human Resources, the recommendation from management and taking account on any plea of mitigation from the employee and/or his/her representative.
- 10.4 It may also be appropriate in certain circumstances to issue a final written warning and demote an employee rather than dismiss them. In other situations in addition to issuing a warning it may be appropriate to instruct them to repay monies. These examples are for illustrative purposes and other action may be taken as necessary.
- 10.5 In considering what level of sanction to issue short of dismissal, managers should seek advice from Human Resources.

**11. Time Limits on “Live” Warnings & Level of Severity**

11.1 Time Limits will be as follows:-

Verbal warning	6 months
First written warning	12 months

Final written warning	24 months
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11.2 Once the warning has expired, details will be placed in a sealed envelope on the employee's personal file. Any further lapses of conduct will be considered on a case by case basis and previous misconduct may only be used to show a pattern of behaviour and not as part of any subsequent management case.

## 12. Dismissal

12.1 Dismissal with Notice: Employees may be dismissed with notice where there is further misconduct following a final written warning.

12.2 Dismissal without Notice: Employees would normally be dismissed without notice when an allegation of gross misconduct is proven. N.B. See 16.3 for the definition of gross misconduct.

## 13. Timescales

13.1 The timescales set out below are intended to ensure that matters are concluded as fairly and as quickly as possible. However they may be varied by management according to the demands of the service or by mutual agreement.

Stage 1/2	Manager/investigating officer invites employee to a disciplinary interview to investigate the facts of a case.	7 working days notice required
	Investigating Officer submits management statement detailing investigation into allegation/s, conclusion and recommendation.	
	Hearing Officer Stage 2 writes to employee with details of allegation/s, calling employee to a hearing and enclosing the management statement	10 working days notice required.
	Time allowable to reconvene meeting if the employee's companion is unable to attend	5 working days
	Employee may submit evidence and call witnesses	3 working days prior to the hearing
	Confirmation of Hearing decision in writing	5 working days

	from date of hearing	
Stage 3	Employee writes to Hearing Officer Stage 2 invoking the appeal stage, from date of outcome letter	7 working days
	Timescales for notification of dates, receipt of further statements etc. as for stage 1/2.	

## **14. Responsibility for Hearing a Disciplinary Case**

### **14.1 Stage 1-2 (Hearing Officer Stage 2)**

This will depend upon the seriousness of the allegation. Case of misconduct should be heard by the Head of Service. However, in the event that the disciplinary relates to the head of service or the matter constitutes gross misconduct, the hearing should be conducted by the relevant Director or an alternate.

### **14.2 Stage 3 (Hearing Officer Stage 3)**

Appeals, other than for verbal warnings, should be heard by the Chief Executive.

## **15. Grounds for Appeal**

15.1 An appeal against disciplinary action will be heard on the following grounds:-

- There was a significant breach of the procedure
- A reasonable person could not have reached the decision to find against the employee on the basis of the evidence submitted.
- The Penalty was too harsh, taking into account the seriousness of the offence and any mitigating circumstances.
- Significant new evidence has become available, and that evidence could not have been available at the time of the original hearing. (This could include evidence that was

not admitted by the hearing officer Stage 2 because it was not submitted within 3 working days before the hearing, provided the employee can demonstrate good reason why it was not submitted in advance of the hearing.)

## **16. Other Considerations**

- 16.1 Managers should seek advice from Human Resources on disciplinary issues at an early stage.
- 16.2 Managers cannot issue a verbal warning without invoking the formal procedure. However informal verbal reprimands (not followed up in writing to the employee) are acceptable as part of the manager's efforts to bring about an improvement in conduct and a record should be kept.
- 16.3 Gross misconduct is defined as acts of misconduct that are so serious that they destroy the employment relationship between the employee and the Council and make any further working relationship and trust impossible.
- 16.4 It is the responsibility of the employee to:
- Contact any witnesses required to support their case.
  - Submit supporting documentation within the timescales set out above.
- 16.5 Disciplinary issues should be treated as a matter of confidentiality. Failure to do so may result in further disciplinary action.
- 16.6 Once the disciplinary process has been exhausted, the matter cannot be considered under other Council procedures (e.g. as a grievance against a sanction imposed).

**THE CONDUCT OF DISCIPLINARY HEARINGS (STAGES 2 & 3)**

1. The Hearing Officer Stage 2 should be accompanied by an HR officer, whose role is to advise on procedure, to advise on ensuring consistency and equity of treatment, to take notes of the proceedings of straightforward, non-contentious cases and to ensure that the letter setting out the decision of the hearing is sent to the employee. He/she may also ask questions of clarification of either side.
2. The Hearing Officer will decide whether an additional note taker should be present.
3. The Hearing Officer will:
  - ◆ Ensure that all the relevant documents have been received by the parties.
  - ◆ Provide an opportunity for either side to raise any concerns about procedural matters.
  - ◆ Ask the employee whether he/she admits the allegation against them.

**If the Employee Admits the Allegation**

4. The employee will be asked whether he/she wishes to offer an explanation or to have any mitigating circumstances taken into account.
5. The Presenting Officer will then be asked if he/she has any comments on the employee's explanation and/or mitigation
6. The Hearing Officer will then ask everyone, except the Personnel Adviser to leave the room whilst he/she considers the matter, advised by the Personnel Adviser.
7. Both sides will then be called back to be told what level of disciplinary action is being taken and the rights of appeal.

8. A letter confirming the action and setting out the reasons for it will be sent to the employee within 5 working days of the hearing.

### **If the Employee Denies the Allegations**

9. The Presenting Officer will present her/his case.
10. Witnesses will remain in the room only while they give their evidence.
11. Witnesses will be questioned by the Presenting Officer.
12. Witnesses may then be cross questioned by the employee or her/his representative and by the Hearing Officer. The HR Officer will also be given the opportunity to ask questions.
13. At the conclusion of her/his case, the Presenting Officer may be questioned by the employee or her/his representative, the Hearing Officer and the HR Officer.
14. The employee, or her/his representative, will then present their case, calling witnesses and being open to questions in a similar fashion to the Presenting Officer.
15. First the Presenting Officer and then the employee or her/his representative will then be given the opportunity to sum up, without introducing any new evidence.
16. If the Hearing Officer feels that he/she needs further evidence, or to hear from a witness again, or to hear from a witness that neither side chose to call, before he/she can reach a conclusion, he/she may adjourn the hearing to make the necessary arrangements.
17. The Hearing Officer will then ask everyone, except the HR Officer to leave the room whilst he/she considers the matter, advised by the HR Officer.
18. Both sides will then be called back to be told the decision, what level of disciplinary action is being taken (if any) and the right of

appeal. If more time is needed to reach a decision, both sides may be informed of the decision in writing. Such delays should be avoided wherever possible and only in exceptional circumstances exceed 1 working day.

### **THE CONDUCT OF APPEAL HEARINGS (STAGE 3)**

1. Appeal hearings will not rehear the whole case, but will focus on the grounds of appeal which have not been accepted. Except where the appeal is based on new evidence, therefore, appeal hearings will not take evidence from witnesses.
2. The Hearing Officer Stage 3 will ensure that all the parties have the relevant documents and ensure that both sides understand the grounds of appeal that that are to be considered.
3. The employee or her/his representative will set out the grounds of the appeal and their justification, referring to the documents that have already been submitted.
4. If witnesses are called they will be questioned by the appellant or her/his representative and cross questioned by the presenting manager. The hearing officer and the HR Officer may then ask questions.
5. At the conclusion of the case for the appeal, the presenting manager, the hearing officer and the HR Officer may question the employee or her/his representative.
6. The presenting manager will then respond to the case for appeal in a similar fashion.
7. At the conclusion of her/his response she/he may be questioned by the employee or her/his representative, the hearing officer and the HR Officer.
8. The hearing officer will then ask everyone, except the HR Officer to leave the room whilst he/she considers the matter, advised by the HR Officer.



9. Both sides will then be called back to be told the decision. If more time is needed to reach a decision it may be given to both sides in writing. Such delays should be avoided wherever possible and only in exceptional circumstances exceed 1 working day.

### **Examples of Misconduct and Gross Misconduct**

Examples of misconduct are set out below. This list, however, is for illustrative purposes only and is not intended to be exhaustive.

#### 1. Misconduct

- Persistent absence from work
- Unauthorised absence from work
- Unauthorised personal use of Council telephones, stationery, office equipment or other Council property
- Failure to declare gifts
- Failure to conform to appropriate standards of dress or personal hygiene
- Failure to comply with the Council's rules on workplace smoking
- Failure to adhere to Council Health and Safety procedures
- Failure to follow other Council or work related procedures, including those relating to the use of IT equipment.
- Failure to meet realistic standards in terms of quality and quantity of work
- Failure to follow reasonable and lawful instructions from their manager
- Disruptive or abusive behaviour likely to affect the efficient working of the employee's immediate colleagues
- Discourtesy towards an individual member of the public, or an employee of an organisation having business with the Council
- Misconduct in relation to official documents of the Council, through neglect
- Canvassing Members of the Council about personal matters that relate to their job or making allegations about work colleagues. Such matters should be dealt with through the appropriate internal procedures.

## 2. Gross Misconduct

- Use or attempted use of an official position for private advantage or the private advantage of another individual
- Carrying out paid or unpaid work during Council working hours including when absent through sickness
- Knowingly making a false, misleading or inaccurate entry to an official document of the Council
- Breach of confidentiality in relation to the business of the Council
- Disruptive or abusive behaviour, including swearing, likely to affect the efficient working of the employee's department
- Abusive behaviour, including swearing, to a member of the public or an employee having business with the Council
- Unauthorised consumption of alcohol on the Council's premises or on Council business
- Racial, sexual or other acts of discrimination or harassment
- Negligent use of the Council's property leading to financial loss
- Substantial failure to adhere to Council Health and Safety procedures.
- Acts of theft, fraud or deliberate falsification of records for personal financial gain
- Fighting or assault on a colleague, member of the public or employee of an organisation having business with the Council
- Gambling or supporting acts of gambling on Council premises
- The possession of illegal drugs or being under the influence of illegal drugs on Council premises or on Council business
- Being under the influence of alcohol on Council premises or on Council business
- Serious racial, sexual or other acts of discrimination or harassment
- Sexual misconduct on Council premises or on Council business
- Soliciting or acceptance of bribes
- Serious negligence or wilful damage to Council property, causing unacceptable financial loss, damage or personal injury
- Bringing the Council into serious disrepute
- Prosecution for an offence outside of work affecting staff or external relations, which amount to a breach of trust