

## **APPENDIX 1**



**East Herts Council**

**Disciplinary Policy**

**Policy Statement**

**Policy Statement No 4 (Issue No 4)  
February 2021**

## **Contents**

1. Purpose, Scope and Principles	03
2. The Right of Accompaniment	05
3. The Role of the Human Resources Team	06
4. Types of Misconduct	06
5. Informal Disciplinary Procedure	09
6. Formal Disciplinary Procedure	09
6.1 Scope	09
6.2 Investigation	10
6.3 Suspension	11
6.4 The Disciplinary Hearing	11
6.5 Disciplinary Hearing Outcomes	13
7. Records of Disciplinary Hearings and Related Meetings	15
8. Cases of Alleged Criminal Activity	16
9. Overlapping Disciplinary and Grievance Issues	17
10. Appeals Procedure	17
Appendix A – Recommended Process for Disciplinary Hearings	19
Appendix B – Disciplinary Hearing Checklist	21

## **1.0 PURPOSE, SCOPE AND PRINCIPLES**

- 1.1 East Herts Council aims to provide a high quality service to our service users and visitors and to encourage positive working relations between colleagues. It is important, therefore, that staff maintain high standards of conduct. Most of the time staff achieve this. However in certain situations it is necessary to use disciplinary action. In such circumstances this disciplinary procedure will be used to ensure that fair and consistent action is taken.
- 1.2 This policy applies to all staff other than Chief Officer and above, where procedures set out in the Constitution are used.
- 1.3 The policy has been developed in accordance with the Advisory, Conciliation and Arbitration Service (ACAS) Code of Practice, 'Discipline and Grievance Procedures'. It has been agreed with Unison.
- 1.4 The principles in this policy apply to all East Herts Council's employees with the following exceptions:
  - (a) Disciplinary matters will be dealt with under separate procedures relating to probationary periods of employment.
  - (b) Incompetence, incapability or other poor performance at work which is considered not to be attributable to a wilful disinclination by the employee to carry out his/her duties efficiently or effectively, but which is thought to be attributable to a lack of skill or aptitude. Such cases will be dealt with under the Managing Performance Policy. However, acts of gross incompetence – i.e. where failings in performance are so serious that they

totally undermine the employer's trust and confidence in the employee – will be dealt with as gross misconduct under this procedure rather than the Managing Performance Policy.

(c) Cases where performance of an employee's duties and/or attendance are adversely affected by ill health. Such cases will be dealt with under the Managing Absence Policy.

- 1.5 No formal disciplinary action will be taken against an employee until the case has been sufficiently investigated.
- 1.6 At each stage of the formal procedure the employee will be advised of the nature of the allegation against him/her and will be given the opportunity to state his/her case at a formal disciplinary hearing before a decision is reached.
- 1.7 At all stages of the following procedure, where specified staff/managers are designated to handle different stages, East Herts Council reserves the right to reasonably substitute suitable alternatives.
- 1.8 An employee may be suspended on full pay during the disciplinary process in relation to a gross allegation if this is appropriate and authorised.
- 1.9 In the case of gross misconduct, the penalty may be dismissal without either notice or payment in lieu of notice.
- 1.10 An employee will have the right to appeal against any formal disciplinary penalty imposed.
- 1.11 It is recognised that disciplinary action against a trade union officer could be seen as an attack on the union's functions. Although normal disciplinary standards will

apply to their conduct as employees, no disciplinary action should be taken until the circumstances of the case have been discussed with a full-time official. This does not apply in the case of a precautionary suspension.

## **2. THE RIGHT OF ACCOMPANIMENT**

2.1 The employee will have the right to be accompanied at all formal disciplinary and appeal hearings by a trade union representative or an East Herts Council work colleague ('the companion'). The employee will also have the right to be accompanied by a trade union representative or an East Herts Council work colleague at formal investigatory interviews.

2.2 The companion will be allowed to:

- Address the hearing
- Confer with the employee
- Put the employee's case
- Ask questions of witnesses
- Sum up the employee's case
- Respond on the employee's behalf to any view expressed at the hearing

The companion has no right to:

- Answer questions on the employee's behalf
- Address the hearing if the employee does not wish it
- Prevent the employer from explaining their case

2.3 It is the employee's responsibility to request his/her chosen companion to accompany him/her to the disciplinary hearing or appeal or investigatory interview. It is also the employee's responsibility to supply copies of all relevant information and documentation to his/her representative.

### **3. THE ROLE OF HUMAN RESOURCES**

- 3.1 The Human Resources team will advise staff on the disciplinary procedure.
- 3.2 Human Resources will provide managers with professional advice and help with managing the procedure. As Human Resources staff will be responsible for monitoring that the procedure is implemented on a consistent basis by all managers, a member of Human Resources should be consulted in all cases where disciplinary action may occur.
- 3.3 A member of the Human Resources team will, where considered appropriate by the manager hearing the case, attend formal investigatory interviews, formal hearings, review and appeal meetings as a management advisor.
- 3.4 Human Resources will arrange for a note taker to attend formal investigatory interviews (if required) and formal hearings to provide a summary record (and not verbatim) of the meeting and the decisions made where applicable. The note taker may be a member of Human Resources or another suitable member of staff.

### **4.0 TYPES OF MISCONDUCT**

4.1 All breaches of East Herts Council's Code of Conduct will be investigated and, where considered appropriate, will lead to disciplinary action being taken. However, the Code of Conduct is not intended as a complete list of rules/expectations in relation to conduct or possible breaches. Any breach of the Code of Conduct will be investigated and may lead to disciplinary action. Breaches fall into two main categories:

- General misconduct
- Gross misconduct

## **4.2 General misconduct**

4.2.1 General misconduct is categorised as the kind of actions where a lower level warning would be seen as sufficient to draw the employee's attention to the need to improve depending on the circumstances of the case.

4.2.2 However in the following circumstances general misconduct would normally result in a written or final written warning:

- where general misconduct is prolonged and/or there are repeated acts of misconduct, or
- there is more than one misconduct issue, or
- they are action(s) of a nature that verge on gross misconduct.

## **4.3 Gross misconduct:**

4.3.1 Gross misconduct is defined by East Herts Council as those acts which are so serious in their nature that they destroy the mutual relationship of trust and confidence between the employee and the employer and make any further working relationship impossible. The following are examples of gross misconduct but this is not an exhaustive list (further examples are provided in the Code of Conduct for Employees),:

- (a) Acts of dishonesty.
- (b) Serious verbal, written or physical abuse, dangerous or intimidatory conduct, violence or threats of violence made against service users, colleagues or others.
- (c) Serious acts of discrimination, bullying or harassment,

- (d) Making unfounded or knowingly malicious allegations against colleagues, other working contacts or service users.
- (e) Serious misuse of facilities, equipment or time.
- (f) Non-compliance with statutory health and safety requirements or East Herts Council health and safety policy and procedures such as to endanger life or risk causing serious injury.
- (g) Non-compliance with East Herts Council's Smoking Policy and the law surrounding smoking in public with regards to not smoking or vaping inside of any buildings.
- (h) Serious acts of insubordination or verbal abuse or extreme rudeness/ discourtesy towards managers or other colleagues, service users or working contacts.
- (i) Refusal to carry out duties or reasonable instructions or to comply with East Herts Council rules.
- (j) Being in an intoxicated and offensive or intoxicated and incapable condition whilst on duty, unless caused by drugs prescribed by a medical practitioner and properly administered.
- (k) Serious breaches of East Herts Council's requirements, policies, procedures and rules with respect to safeguarding, child protection and protection of vulnerable adults, or of our Code of Conduct in relation to maintaining professional relationships with service users.
- (l) Serious acts of misconduct which are prejudicial to East Herts Council's reputation or interests whether committed at work or outside working hours.

- (m) Serious breaches of confidentiality relating to East Herts Council, its employees, members or service users.
- (n) Acts of sexual misconduct or indecency in relation to work, work-related events, service users, colleagues or working contacts.
- (n) Acts of gross incompetence or negligence – i.e. where the consequences of an act(s) of underperformance are so serious as to fundamentally undermine East Herts Council’s confidence in the employee or cause unacceptable loss, damage or injury.

## **5. INFORMAL DISCIPLINARY PROCEDURE**

- 5.1 Where minor problems in conduct are alleged, it is the manager's responsibility to take action to ensure that the individual is made aware of the problem.
- 5.2 The manager will usually have an informal discussion with the member of staff to investigate the matter and decide on an appropriate course of action. Formal steps will be undertaken if the matter is not resolved or if informal discussion and warning is not appropriate in the circumstances.
- 5.3 A note of the meeting and any informal warning issued must be made by the manager and a copy held on the employee’s HR file. Informal action is not subject to time limits for disciplinary purposes.

## **6. FORMAL DISCIPLINARY PROCEDURE**

### **6.1 Scope**

The formal disciplinary procedure will be used where:

- Conduct problems are considered too serious to be

dealt with informally in the first instance, or

- An employee fails to meet East Herts Council's expected standards of conduct after having previously received an informal warning in relation to any aspect of their conduct.

## **6.2 Investigation**

6.2.1 Where a matter arises which is suspected or believed to be a disciplinary matter, an investigating manager will be designated to investigate the matter promptly and adequately.

6.2.2 The employee will be informed of the nature of the allegation(s) being investigated.

6.2.3 Investigation will be conducted with the aim of establishing the facts of the case, and may include:

- Interviewing the employee
- Interviewing any witnesses, and obtaining signed and dated statements
- Collecting documentary evidence
- Seeking further information from internal and external parties

6.2.4 Where the employee is interviewed as part of the investigation, it should be made clear that this is part of the investigation and not a formal disciplinary hearing.

6.2.5 The investigating manager will prepare a report of the investigation. If on completion of the investigation the manager conducting it concludes on the balance of probabilities the allegation of misconduct is justified and may require more than an informal warning (see Section 5 above), a formal disciplinary hearing will be arranged.

6.2.6 The investigating manager will normally present management's case at the disciplinary hearing.

### **6.3 Suspension**

6.3.1 Where the matter to be investigated is thought to involve gross misconduct, the employee may be suspended from work on full pay while the investigation proceeds. Similarly, if during the course of an investigation the investigating manager conducting it is of the view that a serious or gross breach of discipline may have occurred, he or she may then recommend suspension as an appropriate precautionary measure to a member of the Leadership Team. Suspension can only be authorised by a member of the Leadership Team. The LT member should make a note of their decision including any alternatives considered/actioned.

6.3.2 Suspension is not a disciplinary penalty and does not imply that any decision has already been made about the allegations.

6.3.3 In all cases, any decision to suspend will only be taken once alternatives to suspension have been considered and the decision should be confirmed in writing as soon as reasonably practicable.

6.3.4 Short term alternatives to suspension may include:

- Working from home or an alternative location
- Working on appropriate restricted duties
- Working in a more closely supervised environment

### **6.4 The Disciplinary Hearing**

6.4.1 Following any investigation, if East Herts Council considers there are grounds for disciplinary action, the employee will be required to attend a disciplinary hearing.

The purpose of the hearing will be for:

- East Herts Council to explain the allegation(s) against the employee and go through the evidence that has been gathered, including hearing presentations from the investigating manager's witnesses where appropriate.
- The employee to set out their case and answer any allegations that have been made.
- The employee to ask questions, present evidence, call relevant witnesses if they wish and hearing officer deems it appropriate, and to be given an opportunity to raise points about any information provided by any of the witnesses.

6.4.2 The hearing will normally be conducted by a member of the Leadership Team although this may change at the discretion of East Herts Council depending on the seriousness of the matter.

6.4.3 Where reasonably practicable the employee will be given a minimum of 5 working days advance notice of the hearing.

6.4.4 The employee should also be provided with the report of the investigation and copies of all relevant documentation which will be considered at the disciplinary hearing and which is available to East Herts Council at that time. This will normally include any statements obtained from witnesses, whether or not the witnesses will be attending the hearing.

6.4.5 The employee should provide any further documentation and the names of any witnesses at least 2 working days before the hearing.

6.4.6 A hearing may be postponed if the employee's chosen companion is not available at the time specified in the notice or for other good cause, provided the employee proposes an alternative date for the hearing within 5

working days of the original date set for the hearing. If the employee fails, without good reason, to attend or is unable to attend the reconvened hearing it will normally proceed in his/her absence, but failure to attend may be treated as misconduct in itself.

6.4.7 At the disciplinary hearing East Herts Council will go through the allegations against the employee and the evidence that has been gathered. The employee will be able to respond and present any evidence. The employee's companion may make representations and ask questions, but should not answer questions on the employee's behalf.

6.4.8 The employee may request for relevant witnesses to appear at the hearing. This will be arranged provided they are considered to be appropriate to attend by the Chair of the Hearing.

6.4.9 The Chair of Hearing may adjourn the disciplinary hearing if further investigations are necessary, such as re-interviewing witnesses in the light of any new points that have been raised at the hearing.

6.4.10 The employee must be informed in writing of the decision, usually within 5 days, and of their right of appeal against the decision.

## **6.5 Disciplinary Hearing Outcomes**

6.5.1 Although there are three levels of disciplinary action, this does not mean that all these levels must always be followed before a dismissal is considered. Action may be implemented at any level depending on the seriousness of the misconduct involved.

### **6.5.2 Action in cases other than those involving gross misconduct**

Where a reasonable belief in the employee's culpability in relation to the misconduct alleged is established on the balance of probabilities, the following disciplinary action may be taken depending on the nature of the misconduct and any mitigating circumstances.

### **(a) First Written Warning**

Where following a disciplinary hearing, an employee is found to have committed general misconduct they may be given a written warning. The warning should set out the details of the complaint, the improvement required, and the timescale, and the consequences of any further misconduct. A copy of the written warning will be kept on the employee's personal file, but will normally be disregarded for disciplinary purposes after one year, subject to satisfactory conduct and performance.

### **(b) Final Written Warning**

In the following circumstances the employee will be issued with a final written warning where an employee's conduct:

- Continues to be unsatisfactory despite the issue of a first written warning, or
- Is sufficiently serious to justify only one written warning, but insufficiently serious to justify dismissal

The final written warning will follow the same format as in (a) above, except that it will be spent for disciplinary purposes after 18 months (in exceptional cases the period may be longer) subject to satisfactory conduct.

Warnings involving safeguarding children or vulnerable adults will be placed on the employee's personal file permanently.

### **(c) Dismissal**

For an act or acts of further misconduct (other than gross misconduct) by an employee who is under a final written warning given in accordance with (b) above, the employee will be dismissed with notice or with pay in lieu of notice.

**6.5.3 Gross Misconduct:** In cases where, after a disciplinary hearing, on the balance of probabilities an employee's culpability of gross misconduct is established (see definitions in Section 5.2) the employee may be summarily dismissed without either notice or payment in lieu of notice. This means that the employee can be dismissed without any prior warning(s).

6.5.4 Only members of the Leadership Team are authorised to dismiss an employee. The Head of HR and Organisational Development must be consulted on any decision to dismiss.

## **7. RECORDS OF DISCIPLINARY HEARINGS AND RELATED MEETINGS**

7.1 Notes of disciplinary meetings will be taken and a summary record made by a member of the Human Resources team or Executive Assistant Team or other suitably appointed person, and a copy will be supplied to the employee. If the employee does not agree with the record, s/he should submit his/her suggested amendments in writing and these will be attached to the original copy.

7.2 All records and relevant documents will be placed on the employee's personal file, and copies will be circulated to the employee and relevant managers. The exception will be records of informal discussions and warnings (see Section 5 above), which will be recorded by the line manager and placed on the employee HR file for safe keeping.

- 7.3 Although disciplinary warnings will be spent after specified periods, all disciplinary records will be kept on employees' files permanently.

## **8. CASES OF ALLEGED CRIMINAL ACTIVITY**

- 8.1 If the allegation involves suspected non-financial criminal offences at work the manager must inform the Head of HR and OD (or the Chief Executive or the Monitoring Officer if appropriate) with a view to contacting the police. If the allegation involves suspected serious financial irregularity or fraud, the Head of Finance and Property (S151 Officer) (or the Chief Executive or the Monitoring Officer if appropriate) must be informed. The Head of Finance and Property (S151 Officer) will then arrange for any further investigation into the allegation, as necessary. The Council's policy is that the Police or whichever external agency is appropriate to the alleged offence will normally be informed without delay of any suspicions of fraud and corruption. Any decision **not** to notify the Police or other agency will be made by the Chief Executive and should be documented on the case-file. Please refer to the Council's Anti-Fraud and Anti-Corruption Strategy Policy Statement for more information.
- 8.2 Where the employee has been charged with or convicted of a criminal offence at or outside work, or is in custody (whether in remand or following conviction) the manager should contact the Head of HR and OD to determine whether or how to apply this procedure. In particular cases a risk assessment may be appropriate. Employees are expected to inform their manager if they are charged with or convicted of a criminal offence at or outside work.
- 8.3 Disciplinary investigations can be undertaken at the same time as a criminal investigation, except in exceptional circumstances, as advised by the police.

## **9 OVERLAPPING DISCIPLINARY AND GRIEVANCE ISSUES**

- 9.1 An employee may raise a grievance after disciplinary procedures have begun against them. In these instances, the Head of Service should consider suspending the disciplinary case for a short period of time (no more than one week) to consider the implications of the grievance upon the disciplinary.
- 9.2 If the grievance is related to the disciplinary it is permissible to deal with them concurrently. If the grievance is raised before the appeal stage of the disciplinary procedure, if the Head of Service thinks it is appropriate and it is related to the disciplinary, the grievance will be heard as part of the disciplinary procedure. If the employee raises the grievance after the disciplinary process has been completed, the full grievance procedure should be followed. Employees cannot raise a grievance against a disciplinary sanction. The Appeals Policy must be used in this case.

## **10 APPEALS PROCEDURE**

- 10.1 An employee has the right of appeal against any formal disciplinary action taken which he/she believes is unjust.
- 10.2 An employee can appeal against a disciplinary sanction 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.

- 10.3 An employee who wishes to appeal must lodge the appeal in writing with the Head of HR and OD, setting out briefly the grounds of the appeal, no longer than 10 working days after the employee has been notified in writing of the disciplinary penalty.
- 10.4 East Herts Council will write to the employee with details of the arrangements for hearing the appeal as soon as reasonably practicable, which will be held without unreasonable delay.
- 10.5 The appeal will be conducted impartially and where possible by a more senior manager who has not been previously involved in the case. This may be a Service Manager, Head of Service or the Deputy Chief Executive depending on the nature of the appeal. Appeals against dismissal will be heard by a Chief Officer; the Deputy Chief Executive or where they have not already been involved the Chief Executive.
- 10.6 Appeal hearings will not normally rehear the whole case, but will focus on the grounds of appeal. Further evidence may be introduced by either side if it is relevant to the grounds for the appeal and provided it is received within the specified timescale of 3 working days before the date of the hearing.
- 10.7 Following the appeal hearing, the Chair or Panel hearing the appeal should retire to consider their decision and the employee will be informed in writing of the decision as soon as practicable confirming that this decision is the final stage of the appeals procedure.

## **APPENDIX A**

### **Recommended Process for Disciplinary Hearings**

- Chair opens meeting:
  - Check employee has received letter and documentation
  - Check they understand their right to accompaniment (representation)
  - Check witnesses to be called by both sides
  - Outline the process and structure of the hearing (see below); tell them what you will be looking for (the 8-Point Checklist in Appendix B below)
  - Agree ground rules for witness statements, representation and adjournments (adjournments may be requested by either party or by the Manager conducting the hearing and will not be refused unreasonably – if denied an explanation will be given))
- Chair outlines the allegations and asks if employee admits them.
- Chair may ask questions at any point during following proceedings.

### **The Investigating Manager's Case**

- The Investigating manager makes opening statement and presents management case (summarise contents of report).
- The member of staff and his/her representative may question the Investigating Manager.
- The Investigating Manager may call witnesses and question them (subject to the Chair of the Hearing deeming the witnesses appropriate to be called).

- Employee/rep may question the Investigating Manager's witnesses.
- Investigating Manager may re-examine their own witnesses on any issues raised by Chair or employee.
- Investigating Manager briefly summarises the management case against the employee.

### **The Employee's Case**

- Employee and/or their rep present their case against the allegations and explain any special circumstances which may exist and the precise nature of the remedy sought.
- The Investigating Manager may question the employee
- Employee and/or their rep may call witnesses and question them.
- The Investigating Manager may question the employee and employee's witnesses (subject to the Chair of the Hearing deeming the witnesses appropriate to be called).
- Employee may re-examine their own witnesses on any issues raised by the Chair or the Investigating Manager.
- Employee and/or their rep briefly summarises their case.

## **APPENDIX B**

### **Disciplinary Hearing Decision Checklist**

1. Has there been as much investigation as is reasonable in the circumstances?
2. Have the Council's procedures been fairly followed?  
(Consider the principles of the policy)
3. Have I paid sufficient regard to any explanation put forward by or on behalf of the employee?
4. Do I genuinely believe that the employee has committed the general misconduct or gross misconduct as alleged?
5. Have I reasonable grounds on which to sustain the belief, on the balance of probabilities?
6. Is the misconduct sufficiently serious to justify the disciplinary action I am contemplating?
7. Have I had regard to any mitigating circumstances put forward by or on behalf of the employee?
8. Is the decision within the band of reasonable responses of a reasonable employer in the circumstances?

The effect of answering yes to the first five questions is to reach a finding that the allegations have been found. Questions 6 to 8 help to determine whether the proposed sanction is reasonable.