

Disciplinary Policy and Procedure

1.0 Introduction

- 1.1 The Council strives to create and maintain a working environment which is conducive to the achievement of organisational, team and individual objectives and which promotes effective and harmonious working conditions. Huntingdonshire District Council (HDC) believes that all employees should be treated equitably and with respect.
- 1.2 The aim of this policy is to provide a solution for those occasions when standards of conduct or performance are unacceptable and to encourage an improvement in behaviour and prevent future shortcomings in conduct or performance.

2.0 References

Please read this Disciplinary Policy in conjunction with the following:

- ⇒ Attendance Policy.
- ⇒ Capability Policy.
- ⇒ Dignity at Work Policy.
- ⇒ Drugs & Alcohol Policy
- ⇒ Equality of Opportunity Policy.
- ⇒ Grievance Policy and Procedure.
- ⇒ HDC's Key Values and Behaviours
- ⇒ Whistleblowing Policy and Procedure.

- ⇒ Employment Act 2002.
- ⇒ Employment Relations Act 1999.
- ⇒ Data Protection Act 1998.

3.0 Definition

- 3.1 In accordance with the ACAS Code of Practice on disciplinary procedures the Council defines disciplinary as "a situation which may include misconduct and / or poor performance".
- 3.2 This policy does not apply in the following situations:
- ⇒ termination of a fixed term contract of employment, where the term of that contract expires without being renewed,
 - ⇒ termination of a fixed term contract where the reason for termination is that the need for the employee's service has or is about to expire,
 - ⇒ where dismissal arises through organisational and efficiency requirements e.g. redundancy,
 - ⇒ where an employee has resigned from their position, or other termination by mutual agreement.
- 3.3 Where an employee is deemed incompetent, incapable or their performance at work is considered no longer effective or efficient due to a lack of skill or aptitude, or due to health or any other physical or mental quality, these issues should be dealt with under the Capability Policy.

~~Chief Officers are employed under the terms of the JNC for Chief Officers' conditions of service which contain provisions relating to discipline, capability and redundancy. This policy replaces the model procedure for disciplinary arrangements contained in the JNC terms and conditions, subject to the provisions contained in Appendix 7 of this policy.~~

3.4 ***The Officer Employment Procedure Rules within the Huntingdonshire District Council Constitution outlines the disciplinary procedure applicable to the Head of Paid Service, Monitoring Officer and Responsible Financial Officer the holders of these posts are therefore excluded from this policy. Appendix 7 outlines the procedure to be followed for this group of employees.***

~~3.5 The head of paid service (Chief Executive) is employed under the terms of the Joint Negotiating Committee for Chief Executives' conditions of service which contain a model procedure that has been adopted by the Council and the holder of that post is therefore excluded from this policy.~~

4.0 Special Cases

4.1 If an employee raises a grievance during the disciplinary process, the disciplinary procedure may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently.

4.2 Where disciplinary action is being taken against a Trade Union representative the normal disciplinary procedure will apply. However, depending on the circumstances it is advisable to discuss the matter with an official employed by the union, after obtaining the employee's agreement.

4.3 The Council requires the highest standards of integrity from its employees at all times, and for this reason, it will regard any criminal offence committed by an employee whilst at work or otherwise, as an extremely serious matter. If an employee is charged with, or convicted of a criminal offence this is not normally in itself reason for disciplinary action. Consideration will be given to what effect the charge or conviction may have on an employee's suitability to do their job and their relationship with the Council, work colleagues and customers.

5.0 Aims

5.1 This policy aims to:

- ⇒ promote orderly employment relations as well as equity in the treatment of employees,
- ⇒ ensure fairness and consistency in dealing with disciplinary matters,
- ⇒ ensure disciplinary matters are dealt with promptly,
- ⇒ ensure employees are aware of the standards of conduct at work expected of them,
- ⇒ ensure that the necessary investigation is carried out to establish the factual information,
- ⇒ help and encourage employees to improve, dealing with any apparent shortcomings in conduct or performance,

- ⇒ ensure standards are adhered to whilst providing equitable methods in dealing with alleged failures.

6.0 Guiding Principles

- 6.1 This policy is designed to enable facts to be established quickly and ensure consistency in dealing with disciplinary matters.
- 6.2 No disciplinary action will be taken until the matter has been investigated.
- 6.3 At each stage of the procedure an employee will be advised of the nature of the disciplinary and be given the opportunity to state their case.
- 6.4 Disciplinary matters will be heard in a calm and objective manner with the outcome being both fair and equitable.
- 6.5 An employee will not ordinarily be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty will normally be dismissal without notice and without pay in lieu of notice.
- 6.6 Throughout a disciplinary matter everyone will be treated equitably, with dignity and respect regardless of their gender, race, religion or beliefs, sexuality, age or disability.

7.0 Advice and Support

- 7.1 Advice, support and guidance from Human Resources is always available at all stages of the procedure (informal and formal).
- 7.2 To help ensure the procedure is applied equitably, a representative of Human Resources will be present at all formal disciplinary hearings.
- 7.3 The Council employs a confidential First Contact Listening service, a small team of employee volunteers who have received training in basic listening skills. Whilst they are not trained counsellors, they are able to listen to employees who may feel they need to talk through either a work related or personal problem.
- 7.4 The Council provides counselling and support as appropriate for individual employee's needs to ensure the welfare and performance of an employee is dealt with in a supportive and positive manner.
- 7.5 It may be appropriate for the matter to be dealt with by way of mediation, depending of the nature of the disciplinary. This involves the appointment of a third-party mediator arranged by Human Resources, who will discuss the disciplinary matter with all those involved and seek to facilitate an outcome. Mediation will only be used if all parties involved in the disciplinary agree.
- 7.6 Should any aspect of the disciplinary process cause difficulty because of a disability, language barriers or other difficulties, the Council has trade union representatives, Staff Council representatives, work colleagues and Human Resources who are available to provide necessary help or assistance.

8.0 Disciplinary Rules for all employees

8.1 Rules are set out in Appendix 1 which apply to all employees in terms of standards of conduct and performance expected of them during employment. Any breaches of these rules will render an employee liable to disciplinary action.

9.0 Disciplinary Procedure

9.1 The Council has a two phase disciplinary procedure, comprising of both informal and formal processes.
In the cases of minor misconduct or unsatisfactory performance the aim will be to find a solution using the first phase of the procedure – the informal process (See Appendix 2, section 2.0).

9.2 On occasions where disciplinary matters cannot be resolved informally or where matters are of a more serious nature therefore require moving directly to formal action, the disciplinary matter will be dealt with at the second phase (formal) of the disciplinary procedure (See Appendix 2, section 3.0).

The formal disciplinary phase comprises of three stages and includes a provision for individuals to appeal if they are not content with the outcome of the formal disciplinary hearing.

9.3 Please see attached Appendices for further guidance:

- Appendix 1 - Disciplinary Rules
- Appendix 2 - Disciplinary Procedure
- Appendix 3 - Employee Guidelines and Flowchart
- Appendix 4 - Manager Guidelines and Flowchart
- Appendix 5 - Appeals Panel – Terms of Reference
- Appendix 6 - Appeals Sub Group – Terms of Reference
- Appendix 7 - Special provisions for Chief Officers

10.0 The right to be accompanied at Disciplinary investigations and hearing

10.1 The Employment Relations Act 1999 gives a statutory right to be accompanied by a companion at a disciplinary hearing (See Appendix 2, section 11.0).

10.2 HDC allows an employee being investigated and any witnesses that are interviewed, where a statement is required to be signed, the right to have a representative present at the meeting. The chosen companion may be a Staff Council, Union representative or work colleague.

11.0 Keeping written records

11.1 Human Resources keeps a written record of all disciplinary cases dealt with.

These records include:

1. the nature of the disciplinary;
2. all findings made from investigatory meetings;
3. all interviews and documentation in relation to the disciplinary;
4. what was decided and the action taken;
5. the reason for the actions;

6. whether an appeal was lodged;
7. the outcome of the appeal; and
8. any subsequent developments.

It is a Managers responsibility to complete a file note for disciplinary matters dealt with at the informal stage, this is to include the first five points above and be forwarded to Human Resources for the employee's personal file.

- 11.2 All records are treated as confidential and kept in accordance with the Data Protection Act 1998 on an employee's personal file held by Human Resources.
- 11.3 Copies of meeting records will be supplied on request from the employee including copies of any formal minutes that have been taken. In certain circumstances (for example to protect a witness) the Council may withhold some information.
- 11.4 The Council monitors disciplinary statistics for reporting purposes on gender, race, age and disability. All reporting is anonymous.

1.0 **Application**

- 1.1 This disciplinary policy and procedure applies to chief officers, subject to the provisions of this appendix. This appendix also applies to heads of service who have been appointed as chief finance officer or monitoring officer.
- 1.2 In the case of chief officers, this policy replaces the model disciplinary procedure contained in the JNC for Chief Officers for Local Authorities terms and conditions. All other aspects of part 4 of those terms and conditions relating to discipline, capability and redundancy remain unaltered.

2.0 **Chief Finance Officer and Monitoring Officer**

- 2.1 No disciplinary action in respect of the responsible finance officer or monitoring officer, except suspension, may be taken by the Council ~~or a panel of the Council~~ ***except after consideration of a recommendation in a report made by a designated independent panel under Regulation 7 of the Local Authorities (Standing Orders) (England) (Amendment) Regulations 2015 (investigation of alleged misconduct)*** ~~than in accordance with a recommendation in a report made by a designated independent person under regulation 7 of the Local Authorities (Standing Orders) (England) Regulations 2001 (investigation of alleged misconduct).~~
- 2.2 ***The panel as described in the above Rules should be comprised of at least two independent persons and must include at least one member of the Cabinet. The panel membership must be agreed 20 working days prior to a meeting and will be arranged by the Corporate Director (Services) or in the case of any action against that officer, by the Deputy Monitoring Officer.***

The designated independent ***panel*** –

- (i) may ~~direct~~ ***recommend***–
- (a) that the Council terminates any suspension of the relevant officer;
 - (b) that any such suspension must continue after the expiry of the period of two months;
 - (c) that the terms on which any such suspension has taken place must be varied in accordance with the direction; or
 - (d) that no steps (whether by the Council or a panel of the Council) towards disciplinary action or further disciplinary action against the relevant officer, other than steps taken in the presence or with the agreement of the designated independent ***panel***, are to be taken before a report is made by the designated independent person;
- (ii) may inspect any documents relating to the conduct of the relevant officer which are in the possession of the Council, or which the Council has power to authorise ***them*** to inspect;
- (iii) may require any member of staff of the Council to answer questions concerning the conduct of the relevant officer;
- (iv) must make a report to the Council –

- (a) stating *their* opinion as to whether (and, if so, the extent to which) the evidence he has obtained supports any allegation of misconduct against the relevant officer; and
 - (b) recommending any disciplinary action which appears to be appropriate for the Council to take against the relevant officer; and
- (v) must, no later than the time at which he makes his report, send a copy to the relevant officer.

3.0 Suspension

3.1 A chief officer or a head of service appointed as chief finance officer or monitoring officer may be suspended for the purpose of investigating the alleged misconduct occasioning the action. Any such suspension must be on full pay and terminate no later than 2 months later than the day on which the suspension takes effect.

4.0 Chief Officers

4.1 A chief officer will receive not less than 10 working days written notice of the meeting of the Senior Officers Panel. Before the meeting the chief officer has the right, if so requested, within a reasonable time (i) to receive further details of the complaint made and/or (ii) to a postponement of the meeting for a jointly agreed period not exceeding 14 days. The chief officer may circulate a written statement to the Senior Officers Panel before the meeting.

4.2 As a result of a hearing, the Senior Officers Panel can –

- (i) exonerate the chief officer;
- (ii) state its opinion as to whether (and if so the extent to which) the evidence it has obtained supports any allegation of misconduct against the chief officer;
- (iii) determine the disciplinary action (if any) or range of actions which appear appropriate to take against the chief officer. The appropriate course of action will be drawn from the following list:-
 - (a) recorded verbal warning;
 - (b) written warning;
 - (c) final written warning;
 - (d) suspension on half pay or no pay for a specified period;
 - (e) relegation (i.e. a reduction in salary) for a specified period;
 - (f) an invitation to resign or accept retirement;
 - (g) dismissal with notice.

4.3 The final decision will be given to the chief officer in writing at the earliest opportunity.

4.4 In the event of a decision to dismiss a chief officer, such action will be subject to the provisions of Part II of Schedule I of the Local Authorities (Standing Orders) (England) Regulations 2001.

4.5 If a warning is given, it should tell the chief officer –

- (i) the level of improvement required;
- (ii) the date by which it is to be achieved;
- (iii) what will happen if it is not;
- (iv) how to appeal.

4.6 Alternatively, the Panel may explore other alternatives, e.g.

- (i) early retirement;
- (ii) secondment;
- (iii) redeployment to a more junior post where there are issues relating to capability.

4.7 In the case of a chief officer submitting an appeal against a decision of the Senior Officers Panel, the appeal will be dealt with by the Appeals Sub Group in accordance with the terms of reference of that Sub-Group set out in Appendix 6 of the disciplinary policy and procedure.

4.8 The decision of the Appeals Sub Group shall be final.