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Disciplinary Policy

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	Date undertaken:		

## **Disciplinary Policy**



**Policy Statement**

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***Hart District Council believes that the interests of staff and the Authority are best served by formulation and implementation of clear and consistent employment policies and procedures. This policy statement details the Authority's policy on Disciplinary action. All action will be undertaken in line with the ACAS Code of Practice on Discipline and Grievance. It takes into consideration all legal requirements and will be applied in accordance with the Council's Equality and Diversity commitment to treat all its employees with dignity and respect.***

## **Policy Statement**

This Policy applies when there has been an alleged breach of discipline by an employee. It applies to all employees except those subject to a nationally agreed procedure, namely:

- Chief Executive
- Chief Financial Officer
- Monitoring Officer

## **Responsibility and Accountability**

### Employees must:

- Maintain appropriate standards of conduct
- Adhere to any local requirements specific to the workplace, including health and safety requirements
- Comply with all reasonable management instructions

### Managers must:

- Manage and monitor employees' conduct
- Deal with allegations of minor acts of misconduct informally by appropriate counselling and instruction
- Invoke the disciplinary process promptly where necessary
- Comply with policies

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## DISCIPLINARY PROCEDURE

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There are four stages to the formal Disciplinary Procedure:

- Investigation stage
- Disciplinary hearing
- Confirmation of disciplinary action/dismissal
- Appeal stage

### 1. Investigation Stage

The manager must appoint an Investigating Officer within five working days of an alleged breach of discipline being reported; the Investigating Officer will generally be the employee's line manager or someone appointed by the line manager for the purpose of conducting the investigation. When the employee is to be interviewed as part of the investigation, they can be represented by a friend or trade union representative during the interview. The investigating officer must

- Collect as much relevant evidence as possible – see Guidance Note 4 to 6
- Decide on the basis of the evidence that the breach of conduct:
  - is not supported by the evidence and that no further action should be taken; **or**
  - is of a minor nature and should be remedied by counselling or management instruction/advice; **or**
  - should be considered at a disciplinary hearing.
- Decide whether the employee should be suspended – see Guidance Notes 7 to 11

The investigation stage should not take longer than ten working days – any delay beyond this time must be agreed by the Chief Executive or Corporate Director.

### 2. Disciplinary hearing

All disciplinary hearings must be conducted in accordance with the [ACAS Code of Practice on Discipline and Grievance](#).

A hearing officer must be appointed to hear the case, who will be supported by HR. The investigating officer will present the management case to the hearing officer. Where dismissal is a possible outcome of the hearing, it must be conducted by a Head of Service or above.

The employee must be notified in writing, at least 10 working days before the hearing, of:

- The date, time and place of the hearing
- The nature of the allegations and evidence
- The right to be accompanied by a Trade Union representative or a work colleague of their choice. Legal representation is not permitted
- The right to call witnesses and to submit documentary evidence
- Whether dismissal is a potential outcome of the hearing

The employee must also be supplied with a copy of the Code of Conduct and Disciplinary Rules and this Disciplinary Policy and Procedure.

Documentation to be presented at the hearing should normally be exchanged by both parties a minimum of 5 working days in advance of the hearing.

The detailed guidance for a disciplinary hearing is set out in the **Disciplinary Guidance** below.

3. Confirmation of Disciplinary Action/Dismissal

The employee must be told the outcome of the disciplinary hearing, in writing, within 5 working days and must be informed of their right of appeal. The outcome will be:

- Allegation not proven
- Formal warning (recorded oral or written)
- Dismissal with notice
- Dismissal without notice (summary dismissal)
- Disciplinary Transfer

Further details of the types of sanction and the period of effect for each are set out in the Guidance.

4. Appeal

The employee may appeal against:

- The finding that the employee committed the misconduct
- The level of disciplinary sanction imposed
- The decision to dismiss

The employee must appeal to the hearing officer within 5 working days of receiving confirmation of the hearing outcome using the **Disciplinary Appeal Form** (Appendix C). The appeal hearing must be heard without undue delay and normally within 20 working days of receipt of the appeal form.

The employee will be given the appeal decision verbally at the conclusion of the hearing or, if this is not possible, an explanation for the delay. The decision must be confirmed in writing within 10 working days of the appeal hearing.

The appeal decision may be:

- To confirm the sanction
- To decrease the sanction
- To remove the sanction

The detailed guidance for a disciplinary appeal hearing is set out in the **Disciplinary Guidance** below.

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## DISCIPLINARY GUIDANCE

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### General guidance

1. The following documents should be referred to:

- [Code of Conduct and Disciplinary Rules](#)
- [ACAS Code of Practice on Discipline and Grievance](#)

In addition, this Policy links to, and should be read in conjunction with, the [Capability Policy](#) and the [Attendance management Policy](#) where appropriate.

2. The employee has the right to be accompanied or represented at a disciplinary hearing or appeal by a Trade Union representative or a work colleague of the employee's choice. Only one person can be the nominated representative. The employee may request a rearrangement to enable representative to attend. Legal representation is not permitted.
3. If action is required under this Policy against an accredited Trade Union representative, the appropriate Trade Union official must be informed as soon as reasonably practicable. In the case of action against a representative of UNISON the Branch Secretary should be informed.
4. Allegations of misconduct linked to a child or vulnerable adult may result in the legal requirement to refer the employee/ex-employee to the Independent Safeguarding Authority for consideration. A decision on referral will normally be taken following a disciplinary/dismissal hearing if the Council believes that there is "sufficient evidence" to support the belief that the referral criteria are met.

### Investigation stage

4. The employee's line manager is usually responsible for the investigation but can appoint another manager for the purpose. The investigation itself **does not** constitute disciplinary action.
5. The Investigating Officer must:
  - Meet with the employee against whom the allegation is made (allowing the employee to have a representative if required)
  - Collect as much information as possible within the time available for the investigation. This may include interviewing witnesses and gathering written information or other documentary evidence
6. If the employee against whom the allegation is made is a Corporate Director, the Chief executive is the investigating Officer and the staffing committee will be the hearing body.

### Suspension of an employee

7. At any time during the investigation stage, the employee can be suspended on full pay. Suspension would take place:
  - In cases of alleged gross misconduct
  - Where the continued presence of the employee in the workplace could impede the investigation
8. Suspension will be on full pay and is not a disciplinary sanction. It should be for a period of up to two weeks, but can be extended in appropriate circumstances by the Investigating Officer, with the agreement of the Corporate Director or Chief Executive. The employee must be notified of the extension in writing, stating the period of extension and the end date.
9. While suspended, the employee must not make contact with colleagues or attend their workplace except:
  - to attend investigatory meetings or disciplinary hearings
  - to meet with their Trade Union representative, at the Trade Union office
  - to collect personal belongings at a time and date agreed by their manager
  - to arrange for staff members to be witnesses in the hearingAny breach of these conditions will be a matter for disciplinary action.
10. The employee must be given a named person with whom they can maintain contact during the period of suspension. They should also be informed of the service offered by the Employee Support Line.
11. Any employee who is in a post classified as one that is a Regulated Activity (e.g. Leisure Operative) and is suspended from duty may be required to be referred to the Independent Safeguarding Authority (Please contact an HR Adviser to discuss)

### **Disciplinary hearing**

12. The detailed process for conducting a disciplinary hearing is set out in Appendix A to these Guidance notes.
13. In the case of allegations against Corporate Directors, the same process will apply, except that the disciplinary hearing will be heard by the Staff Committee.
14. The employee must attend the hearing, except in the case of extended or repeated ill-health or other extenuating circumstance, when the manager will conduct the hearing in the absence of the employee. The employee must be given the opportunity to attend and informed that the hearing will be conducted in his/her absence. The employee will be advised of the date of the hearing and invited to submit his/her representations in some other way.
15. Both parties may call witnesses including those employed by the Council and submit documentary evidence. Witnesses will be allowed time off to attend the hearing but the Council will not oblige them to attend.

### **Confirmation of disciplinary action/dismissal**

16. The following disciplinary sanctions may be imposed. The manager may impose a sanction at any level but if a formal warning is still in effect from a previous finding of misconduct, the level of sanction imposed on the new occasion must be the same or higher than the one already in effect. In exceptional circumstances the period that a

warning remains in effect may be extended subject to the approval of a Corporate Director or Chief Executive

<b>Sanction</b>	<b>Period of effect</b>
Recorded oral warning	6 months
Written warning	12 months
Final written warning	12 months
Dismissal with notice	Notice period
Summary dismissal	Immediate
Disciplinary transfer	Immediate

17. The written notification of any type of written warning must contain:
  - The nature and level of the warning
  - The reasons why it is being given
  - The standards of conduct required in future and any support agreed to assist this
  - The consequences of further breaches of conduct
  - The right of appeal
  
18. In cases where the manager does not consider it appropriate to issue a formal warning, a management instruction can be issued to confirm the expected level of future conduct.
  
19. Dismissal with notice will be applicable where a final warning is already in effect, and a further allegation of misconduct (lesser than gross misconduct), has been proven, making dismissal the next level of disciplinary sanction available. In exceptional circumstances (to be authorised by a Corporate Director or Chief Executive) dismissal with notice may be applied where only a written warning is in place.



## **Appeal**

20. The detailed process for conducting an appeal hearing is set out in Appendix B to these Guidance notes.
21. An appeal against a formal warning must be heard by a manager at a more senior level than the manager taking the original disciplinary action or, if the appeal is made by a Head of Service or Corporate Director, it will be heard by the Staffing Committee. The appeal must be heard without undue delay and normally within 20 working days of receipt of the Disciplinary Appeal Form
22. An appeal against dismissal must be heard by the Corporate Director or Chief Executive, in accordance with the procedure set out in the disciplinary procedure.
23. An appeal hearing must be a re-hearing of the original case, not a review of the decision, unless **both sides** agree that only one part of the case is reviewed if the appeal is limited to a specific aspect of the original decision.

Timescales may be varied by mutual agreement, and following approval from a Corporate Director or Chief Executive.

## Appendix A – Procedure for a Disciplinary Hearing

**Note:** *Manager* = the manager hearing the case. Where dismissal is a possible outcome, this will be a senior manager or Head of Service.

*Investigating Officer* = the line manager, or other appointed person who presents the case for disciplinary action. The Investigating Officer should request support from HR.

*HR Adviser* = representative from HR/Payroll who is supporting the manager hearing the case

1. The Investigating Officer will outline the allegation, present the evidence against the employee and call any witnesses.
2. The employee (or their nominated representative) may question the Investigating Officer and the witnesses.
3. The Manager and the HR Adviser may question the Investigating Officer and the witnesses.
4. The employee (or representative) will respond to the allegations and may call witnesses
5. The Investigating Officer may question the employee (or their nominated representative) and the witnesses.
6. The Manager and the HR Adviser may question the employee (or their nominated representative) and the witnesses
7. The Investigating Officer will sum up the case against the employee
8. The employee (or representative) will sum up the response
9. The Manager will adjourn to consider the evidence and make a decision regarding the allegation and, if proven, the appropriate disciplinary action.
10. The employee will be advised of the decision whenever possible at the conclusion of the hearing, or within 5 working days of the hearing.
11. The decision will be confirmed in writing within 10 working days.

## **Appendix B – Procedure for a Disciplinary Appeal Hearing**

**Note:** *Manager* = the manager who took the original decision.

*Investigating Officer* = the line manager, or other appointed person, who presented the case at the disciplinary hearing.

*Chief Officer* = the Chief Officer hearing the appeal, this can be the Chief Executive or a Corporate Director with delegated power. The Chief Officer will be supported by a senior Human Resources manager.

*Appellant* = the employee appealing against the disciplinary decision

*Panel* = Employment and Appeals Panel when relevant

1. The Investigating Officer or the Manager (as decided by the management side) will outline the allegation, present the evidence against the employee (as presented at the original disciplinary hearing) and call any witnesses. The Manager who heard the original case may be called as a witness if they are not presenting the case.
2. The Appellant (or their nominated representative) may question the Investigating Officer/manager and any witnesses.
3. The Chief Executive/Corporate Director/Staffing Committee may question the Investigating Officer/Manager and the witnesses.
4. The Appellant (or representative) will explain his/her case and may call witnesses
5. The Investigating Officer/Manager may question the Appellant (or representative) and the witnesses.
6. The Chief Executive/Corporate Director/Staffing Committee may question the Appellant (or representative) and the witnesses
7. The Investigating Officer/Manager will sum up the case
8. The Appellant (or representative) will sum up the response
9. The, Chief Executive/Corporate Director/Staffing Committee together with the HR Manager, will adjourn to consider the appeal decision.
10. The appeal decision will be given when possible at the conclusion of the hearing, or within five working days of the hearing.
11. The decision will be confirmed in writing within 10 working days.

## Appendix C - Disciplinary/Dismissal Appeal Form



This form may be used to register an appeal against a decision to impose a disciplinary sanction or against dismissal for any reason. It should be sent to the manager who made the decision, normally within **5 working days** of the date of the decision.

Please note any field with \* is mandatory

Employee/Pay No. *	
Surname *	
Forename(s) *	
Department *	
Post Title *	
Name of the Manager making the decision *	
Date of Hearing *	

I wish to appeal against (tick ONE box) *	
The finding that I committed or was involved in the disciplinary offence	<input type="checkbox"/>
The form of disciplinary action taken against me	<input type="checkbox"/>
My dismissal	<input type="checkbox"/>
Reason for my appeal *	

I will be accompanied at the Hearing by *	
Signed *	
Dated *	

Please retain a copy for your own personal records.