

# **WINDERMERE TOWN COUNCIL**

## **DISCIPLINARY POLICY**

Adopted by Full Council on 8<sup>th</sup> August 2018, due for revision August 2020

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### **PURPOSE**

This procedure is designed to help and encourage all employees to achieve and maintain acceptable standards of conduct and job performance. The aim is to ensure consistent and fair treatment for the individual.

In accordance with the Employment Rights Act 1996, Human Rights Act 1998 and the ACAS Code of Practice on Disciplinary Procedures this procedure sets out the framework for resolving issues relating to misconduct and unsatisfactory performance.

This procedure will apply to all employees unless it conflicts with a contractual or statutory requirement, which will take precedence. It will be applied fairly, consistently and in accordance with the Equality Act 2010.

### **INFORMAL PROCEDURE**

Where a minor disciplinary issue arises the Mayor (in cases of the Clerk) or the Clerk (in the case of any other employees) will normally consider the matter and will resolve it if they can without recourse to this formal procedure. The Mayor or Clerk will advise the employee concerned of the conduct or standard expected in the future. In many cases this will provide sufficient encouragement for the employee not to commit further acts of misconduct.

The employee will be offered guidance, support and where appropriate additional training to achieve the necessary standards.

### **FORMAL PROCEDURE**

Allegations of more serious misconduct or where a previous warning has been given but the required improvement has not been made, should immediately be referred to Full Council. This will be in cases where

- previous informal advice or warnings have proved ineffective;
- the allegation is of a serious nature;
- a number of minor allegations are made which taken together constitute a serious breach of discipline.

Full Council will constitute a disciplinary sub-committee of 3 members, including a Chairperson. They will then be responsible for nominating an investigating officer. The disciplinary sub-committee may provide verbal or written warnings for minor misconduct. Only the Full council has the right to suspend an employee.

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### **Suspension/Gross Misconduct:**

In some circumstances the council may consider suspension, with pay, pending further investigation or until the disciplinary hearing takes place. Suspension may be appropriate in cases potentially involving gross misconduct. The following list gives examples of matters likely to be regarded as gross misconduct and is not exhaustive:

- Refusing to follow reasonable management instructions
- Theft from the Council, its members, employees or the public
- Physical assault or verbal abuse □ Fraud or deliberate falsification of records
- Falsification of qualifications
- Serious negligence which causes unacceptable loss, injury or damage
- Serious acts of insubordination
- Serious breach of confidence
- Use of privileged information for personal gain
- Malicious damage to the Council's property
- Sexual misconduct at work
- Discrimination, victimisation or harassment
- Serious breaches of safety rules
- Serious incapability through alcohol or drugs
- Accessing or distributing pornography on the Council's IT facilities

An employee should be advised of the reasons for suspension and that suspension in itself does not constitute disciplinary action. The period of suspension should not normally last for more than 20 working days, however where necessary this period can be extended. The decision as to whether suspension is necessary can be reviewed at any time in the disciplinary process.

### **Investigation:**

Before any decision can be made about whether or not a disciplinary hearing is necessary, an investigation must take place. The disciplinary sub-committee should appoint an appropriate independent investigating officer, who could be an external adviser and who will report back with their findings and make recommendations as to whether a disciplinary hearing should be convened.

The responsibilities of the investigating officer are to collect evidence by interviewing any relevant witnesses and gathering all documentation.

An investigatory interview should be held with the employee concerned giving 5 working days' written notice outlining the nature of the allegation. The purpose of the interview is to present the findings of the investigation to the employee and allow them to answer or shed light on the potential allegations to assist the investigating officer to decide if he

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or she should recommend a disciplinary hearing and/or whether any further investigation is needed.

For the benefit of the employee and the Council any investigation must be concluded within a reasonable timescale. If there is a delay in completing the investigation it is the responsibility of the investigating officer to regularly update the employee or their representatives on the progress of the investigation.

Once the investigating officer has gathered all the relevant facts and reviewed the evidence, a report should be drafted to the sub-committee, recommending one of the following:

- take no further action and inform the employee accordingly ;
- advise on the need for counselling, training, extra supervision or written advice as appropriate;
- arrange a disciplinary hearing.

#### **A Disciplinary Hearing**

If, following the recommendations of the investigating officer, the disciplinary sub-committee concludes that a hearing is required then the employee should be given at least 5 working days' notice in writing. The letter should include a clear written statement of the allegation and should enclose any documentary evidence being relied upon and a reminder of the employee's right to be represented.

The investigating officer is responsible for presenting the case and making arrangements for any witnesses that he or she relies upon, to attend the meeting.

The employee is responsible for arranging any representation they choose to have and any witnesses that they may wish to call. Details of any witnesses the employee intends to call and a copy of all documents that the employee may wish to refer to at the hearing must be submitted to the Investigating officer at least 3 working days prior to the hearing.

The panel for a hearing would normally comprise the disciplinary sub-committee and an independent Human Resources representative to advise (possibly from the District Council). The panel will appoint a chairperson.

The objective of the hearing is to hear the evidence in respect of the allegation, listen to the employee's response and to decide whether or not the allegation is substantiated. If the allegation is substantiated, the hearing must determine the disciplinary sanction to be applied in light of the seriousness of the offence and having regard to previous relevant disciplinary history

The following procedure should be followed in a Disciplinary Hearing:

- introduction of panel members and their roles;
- clarification of the purpose of the hearing and statement of the allegation;

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- presentation of the case by the investigating officer with witnesses called as necessary;
- questions by employee and/or their representative;
- questions by the panel;
- employee and/or their representative to state their case with witnesses called as necessary;
- questions from investigating officer;
- questions from panel;
- investigating officer to sum up;
- employee/representative to sum up;
- panel adjourn to make their decision;
- hearing reconvened and the employee/representative informed of the decision and, if necessary, their rights of appeal.

Requests for an adjournment can be made at any stage and it is up to the chairman to decide whether or not a request should be granted.

The decision of the panel must be confirmed to the employee in writing within 5 working days. The letter should clearly set out the panel decision the length of time that any warning will be active for, the expected improvement in conduct, any assistance that will be provided to achieve this and the employee's right to appeal.

### **Levels of Disciplinary Action:**

In determining the appropriate disciplinary action, regard should be given to the employee's previous record, the gravity of the offence and any explanation given.

Although the procedure implies a sequential approach there may be certain circumstances where the matter needs to be considered immediately under Stages 2, 3 or 4 (below).

#### **Stage 1 Oral Warning**

For a minor offence, a formal verbal warning (confirmed in writing) making it clear that further misconduct will render the employee liable to further disciplinary action including more severe consequences.

#### **Stage 2 First Written Warning**

For a more serious offence or where a previous warning to the employee has not resulted in the required improvement to their conduct.

#### **Stage 3 Final Written Warning**

For a sufficiently serious offence, which might warrant only one written warning but is insufficiently serious to justify dismissal, or where previous warnings have been ineffective.

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Records of informal meetings and formal warnings will be kept on employee's personal files. An oral warning will be live for 6 months and written warnings live for 12 months from the date of the disciplinary hearing. Final written warnings will be live for 2 years.

### **Stage 4**

Dismissal with notice

For an act or acts of misconduct, other than gross misconduct, by an employee who is under a final written warning. The employee will be liable to dismissal with notice or pay in lieu of notice.

Dismissal without notice

In cases where gross misconduct is established the employee will be liable to summary dismissal, that is without notice or pay in lieu of notice.

### **THE RIGHT OF APPEAL**

An employee has the right to appeal against disciplinary action resulting in a warning or their dismissal. They must do within 10 working days of the disciplinary hearing informing them of the disciplinary action taken in writing to the chairman of the panel. The appeal letter must set out the grounds for the appeal, normally under one of the following headings:

- the severity of the disciplinary action;
- the findings of the panel on a point of fact which is pertinent to the decision of the hearing;
- a failure to adhere to the disciplinary procedure.

The date and time of the appeal will be organised by the chairman of the panel. It is the responsibility of each side to prepare themselves for the appeal including arranging for any witnesses to attend.

An appeals committee will be constituted of three members who have not been involved with the case previously. They will hear the appeal and will be assisted by an independent adviser.

The chairman of the original panel and the employee or their representative will, where possible, agree papers for submission to the appeal 5 days prior to the hearing.

### **The Appeal Hearing:**

The objective is to review the decision of the disciplinary hearing and decide whether that action is warranted or not and, if the action is not warranted, to determine what action if any is appropriate. In doing so the Appeal Panel will have regard to seriousness of the offence and any previous relevant disciplinary history

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The following procedure will be used:

- appellant puts their case including calling any witnesses;
- the manager has the opportunity to ask questions of the appellant and witnesses;
- the chairman of the previous hearing, who took the disciplinary action puts their case for having done so, which may include calling any witnesses;
- the appellant has the opportunity to ask questions of the manager and witnesses;
- the appeal hearing panel has the opportunity to ask questions of both parties and witnesses;
- both parties have the opportunity to sum up should they wish to do so. No new information should be introduced at this stage and the appellant should have the opportunity to sum up last;
- the appeal is adjourned to allow the appeal hearing panel to reach a decision;
- the appeal is reconvened and both parties are informed of the decision;
- appeal hearing panel writes to both parties informing them of their decision within 5 working days.

The appeals hearing panel has the right to call its own witnesses should it consider this to be of assistance in making its decision.

The findings of the appeals panel will be final as far as Council procedure is concerned.