



Elstree and Borehamwood Town Council

Disciplinary Policy and Procedure

Policy Statement

Elstree and Borehamwood Town Council aims to ensure that there will be a fair and consistent approach to the enforcement of standards of conduct and performance throughout the council.

This policy is designed to help and encourage all employees to achieve and maintain standards of conduct and job performance.

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.

Scope of Policy

The policy applies to all employees of Elstree and Borehamwood Town Council (herein referred to as “the council”).

Review Statement

This policy has been prepared considering prevailing legislation and recognised good practice. New legislation requirements or changes in current legislation may necessitate the review of this policy document. The council will continue to review and amend all / part of this policy on a regular basis. It is the employee’s responsibility to ensure that the copy of the policy being referred to is the most up-to-date version.

Equality

In putting the procedure into practice, no aspect of the procedure will discriminate on the grounds of race, sex, sexual orientation, gender reassignment, age, religion, politics, marital status, disability, politics, caste and / or union membership or any other grounds likely to place any particular employee at a disadvantage.

The procedure applicable to formal disciplinary action is fully compliant with current statutory requirements.

Principles

The principles of this policy are:

- No disciplinary action will be taken against an employee until the case has been fully investigated and a disciplinary hearing has taken place. The employee will be advised in writing of the nature of the complaint against them and the arrangements for the hearing.
- The employee will be given the opportunity to state their case before any decision is made.
- At all stages the employee will have the right to be accompanied by a colleague during the investigation, disciplinary interview or disciplinary appeal.
- In reaching decisions on appropriate disciplinary penalties, the council will take into account any mitigating circumstances.
- No one will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be summary dismissal, i.e. dismissal without notice or pay in lieu of notice.
- The employee will have the right to appeal, wherever possible, against any disciplinary penalty imposed.
- The procedure may be initiated at any of the stages below if the alleged misconduct warrants such action. For example, Where an employee's record shows a pattern of abuse of the disciplinary policy - e.g. repeated misconduct occurring once a live warning has lapsed, the Council may consider extending the duration of any warning or escalating any new action against the employee, to the next stage of the policy (i.e. as if the prior live warning had not lapsed).

In poor performance cases, where the reason is not within the control of the employee, e.g. health, training or the changing nature of the job, the council will consider the capability of the employee as an employment issue in place of this procedure. However, poor performance resulting from, for example, negligence, lack of application or attitudinal problems will be dealt with under the Discipline procedure.

Roles and responsibilities

Formal disciplinary action under this procedure can be initiated or taken only by, the Management Team as follows:

- a. Town Clerk, or
- b. Deputy Town Clerk.

Where a minor disciplinary issue arises the employee's line manager will normally consider the matter and will resolve it if they can without recourse to the 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 a member of the Management Team who will then be responsible for nominating an Investigating Officer. If the misconduct relates to the Town Clerk this should be referred to the Staffing Committee (appointed at the Annual Council meeting each May). The manager carrying out the investigation should not be the same manager carrying out any future disciplinary hearing in the same case.

Employee's Responsibilities

All employees have a responsibility to:

- take full accountability for their actions and inactions
- maintain expected and reasonable levels of attendance and performance at work
- respect and work in line with the council's Code of Conduct
- attend and participate in relevant meetings
- comply with the council's policies
- conform with any council or statutory rules or agreements applicable to their role
- maintain a reasonable standard of behaviour acceptable to management and other employees including behaviour as outlined in the Code of Conduct and in line with the Diversity, Equal Opportunities policies.

During the Probationary Period

The council reserves the right, at its absolute discretion, not to apply the full disciplinary policy during an employee's probationary period, including any extension periods.

Procedures

The disciplinary policy contains the following stages;

- Informal Stage
- Stage 1 Written Warning
- Stage 2 Final written warning
- Stage 3
 - a) dismissal with pay or with pay in lieu of notice and
 - b) summary dismissal
- Exceptional circumstances- alternatives to dismissal

Investigatory Meetings

The council is committed to ensuring that all potential infringements of disciplinary rules are fully investigated. Prior to disciplinary action, an investigation will be conducted into the allegations of misconduct by the employee's immediate supervisor / manager.

Employees will be given notice, in writing that this is to take place, outlining the general nature of the allegation. In some circumstances (e.g. potential fraud), it may be deemed appropriate not to inform the employee at the commencement of the investigation.

Investigations may entail carrying out interviews with the employee concerned and third parties such as witnesses, colleagues and managers, as well as analysing written records and information. The investigation report will be made available to all the parties concerned. Where necessary, the identity of witnesses will be kept confidential.

Where the alleged disciplinary matter is straightforward, the investigation may be brief. In more complex situations, investigations may take longer and employees will be kept apprised of progress. The employee will be advised in writing should any additional allegations arise during an investigation. Investigation meetings are not disciplinary hearings, and employees

do not have the right of representation. However, the council may consider and allow a request, if considered appropriate under the circumstances.

Once all investigation meetings have been conducted, an investigation report will be completed. This can be sent to the employee at their request. This will include a recommendation to proceed to a formal disciplinary hearing, or not to uphold the allegations and draw the process to a close

Suspension

The council may decide to suspend an employee pending investigation. This is not disciplinary action and any such suspension will be with pay. The duration will vary according to the situation but timescales will be as short as reasonably possible. Whilst managers have the right to suspend, suspension must be approved in advance by the Town Clerk. The employee will be issued with a letter confirming their suspension from work on full pay, and any other specified terms, and confirming that the period of suspension will be regularly reviewed.

A manager or supervisor may, in exceptional circumstances, send an employee home pending a decision about suspension.

- Suspension can be used in serious situations of alleged gross misconduct

It may be necessary to suspend in other circumstances such as:

- Where there is a clear concern that the employee or others may be placed at risk if the employee remains in their position pending an investigation
- Where it is considered possible that the employee may influence witnesses or interfere with relevant evidence and the investigation

In some circumstances, as an alternative to suspension, it may be considered more appropriate to request the employee to undertake alternative duties which remove them from their normal workplace, pending a full investigation.

Informal Stage

Informal and early intervention is considered essential to good management and in the course of day to day activities there will be occasions when managers will need to advise employees informally of minor breaches of discipline. Mediation may be used as an alternative way of managing a situation informally. This does not preclude the use of formal disciplinary procedures.

Disciplinary Hearings

A disciplinary hearing will normally be conducted by the appropriate supervisor / manager who may be accompanied by an independent external HR Consultant.

1. The intention of the hearing is to give the employee every opportunity of stating his/her case and to allow management to gather all relevant information before making a final decision.

2. The employee will be notified in writing at least 5 working days before the hearing takes place. This notice may be extended to allow an employee to be represented adequately.
3. The notification will include:
 - a) the fact that there will be a hearing held under the Council's disciplinary procedure;
 - b) the reason for the hearing;
 - c) the date, time and place of the hearing;
 - d) the right of the employee to be represented or accompanied;
 - e) an indication of who is expected to be conducting the hearing;
 - f) the reason why his/her conduct is thought to warrant disciplinary action supported by any documentary evidence and witness statements.

Examples of Misconduct

The following are examples of the types of conduct which are unacceptable and which may lead to disciplinary action. The list is not exhaustive and other behaviour not listed may lead to disciplinary action when necessary.

- Poor time-keeping/ attendance
- Unjustifiable absence from work
- Unacceptance levels of sickness absence
- Continued poor performance, despite appropriate support
- Waste, loss or damage of Council property through failure to take due care
- Negligence or failure in performance of duty
- Inappropriate use or unauthorised use of e-mail, IT or telephone facilities

Formal Disciplinary Sanctions

Where informal interventions have failed to improve the situation or a more serious breach of rule have occurred, and after a disciplinary hearing the following sanctions may apply:

Stage 1 - Written Warning

This may be issued if the first offence is serious enough to warrant action at this level. A copy of this written warning will be kept on file but will be disregarded for disciplinary purposes after 6 months, subject to satisfactory conduct and / or performance. Managers will hold regular review meetings with employees who have a 'live' warning.

Stage 2 - Final Written Warning

This may be issued if the first offence is serious enough to warrant action at this level. Alternatively, it may be issued after a written warning, depending on the severity of any subsequent misconduct or the failure to achieve required standards of performance / conduct. A copy of the warning will be filed but will be disregarded for disciplinary purposes after 12 months, subject to satisfactory conduct. In exceptional cases the period of the warning may be extended. Managers will hold regular review meetings with employees who have a 'live' warning.

Stage 3a - Dismissal with Pay

If there is no satisfactory improvement or if further serious misconduct occurs following previous warnings, after a consideration of the facts and circumstances of the case, an employee may be dismissed with notice or with pay in lieu of notice at the discretion of the officer who makes the dismissal.

Stage 3b - Gross Misconduct

If, after investigation, an employee is found to have committed an act of gross misconduct, the normal consequence will be summary dismissal without any notice or pay in lieu of notice. While the alleged gross misconduct is being investigated, employees may be suspended with pay.

Examples of Gross Misconduct

The following list, which is not exhaustive, provides examples of offences which are normally regarded as gross misconduct:

- Theft, fraud, money laundering, bribery (giving and receiving)
- Unauthorised entry to computer records or deliberate falsification of records
- A serious breach of the council's rules on email and internet usage
- Fighting or assault
- Deliberate or reckless damage to property belonging to the council or other employee
- An inability to perform job duties through being under the influence of alcohol or illegal drugs
- A serious breach of the council's health and safety rules or a single error due to negligence which causes or could have caused significant loss, damage or injury to the council, its employees or customers
- Conviction of a criminal offence that makes the employee unsuitable or unable to carry out their duties
- A serious act of insubordination, such as deliberate refusal to carry out proper instructions
- Acts of bullying, harassment or discrimination
- A serious breach of trust or confidentiality.
- Bringing Elstree and Borehamwood Town Council into disrepute
- Serious negligence, or disregard of the council's rules and regulations which causes or might cause unacceptable loss, damage or injury.
- Any discriminatory behaviour including the use of discriminatory offensive language
- Undertaking private work on the premises and / or in working hours without express permission
- Serious breach of trust and confidence

If, on completion of the investigation and the full disciplinary procedure, the council is satisfied that gross misconduct has occurred the result will normally be summary dismissal without notice or payment in lieu of notice.

Exceptional Circumstances- Alternatives to Dismissal

Actions, short of dismissal, as an alternative to dismissal may be considered at the absolute discretion of the Town Clerk and in exceptional circumstances. If alternative action to dismissal is considered appropriate, an employee will be issued with a final written warning of duration of at least 12 months and up to 24 months. In addition, the council may use one or more of the following, depending on the circumstances:

- suspension for a period without pay
- demotion to a more suitable job, if available, with no accompanying protection of salary, or benefits
- loss of benefits for a specified period
- withholding or deferring the receipt of bonus payments and / or pay rises for a specified period
- warning will be kept live for an extended period

The alternatives, short of dismissal, mentioned above are not exhaustive and the council reserves the right to take any action it considers reasonable and appropriate in the circumstances. The employee may appeal against action taken as an alternative to dismissal.

If the employee fails to attend any disciplinary meeting without good reason, e.g. sickness, incapacity or unforeseen eventuality then the meeting can be held in their absence, authority for proceeding with a disciplinary hearing in these circumstances will be sought from The Town Clerk.

Criminal Charges or Convictions Outside of Employment

These should not be treated as an automatic reason for dismissal unless law requires this. Consideration should be given to whether the offence is one that makes the employee unsuitable for their type of work. After considering the facts, the line manager / supervisor, should consider whether disciplinary action is warranted

When the alleged misconduct relates to criminal offences arising from or having a bearing on employment the following aspects are to be considered when deciding whether to take action to suspend or dismiss.

The manager taking the disciplinary hearing is not expected to establish whether the employee committed the criminal offence beyond reasonable doubt but rather whether the employee did so on the balance of probability.

Where a criminal charge has been preferred, the matter should be referred to the Town Clerk, who should deal with the matter within the normal timescales. The Town Clerk should not wait until the outcome of the criminal case is known (unless the date of the court hearing is very close).

In relation to criminal offences, arising from or having a bearing on employment, where the police are called in they are not to conduct the disciplinary investigation, nor to be present at the disciplinary interview.

As in any other situation, before any decision is taken about disciplinary action, reasonable grounds should be established for believing that the individual committed the particular

offence, such grounds should be established as a result of a full internal investigation and consideration of the facts and evidence available to in the normal way.

Appeals

An employee who wishes to appeal against any disciplinary decision must do so to a nominated manager within five working days of receiving notification of the disciplinary decision. The manager will hear the appeal and may review the sanction but cannot usually increase it.

Where an appeal is requested following dismissal of an employee the matter will be heard by the Appeals Committee (appointed at the Annual Council meeting each May), with the case for the Council being made by the Town Clerk or Deputy Town Clerk. The appeal will be heard within 10 working days of the receipt of the written notification of appeal.

At the appeal hearing the dismissed employee will have the right to be represented by a trade union representative or be accompanied by a work colleague of their choice. The employee will be given the opportunity to fully state their case, to present any evidence in support of their appeal and to bring witnesses to support their appeal where appropriate. A decision will be delivered verbally to the employee within 24 hours of the hearing being concluded. This decision will be confirmed in writing within 3 working days of the concluded hearing. The written notification will include the decision, the reasons for the decision. The notification will state that the decision of the Appeals Committee is the final stage in disciplinary procedure.

The employee should note that an appeal hearing is not intended to repeat the detailed investigation that led to or formed part of the disciplinary hearing, but to focus on specific factors that the employee feels have received insufficient consideration, such as:

- An inconsistent / inappropriate harsh penalty
- Extenuating circumstances
- Bias of the disciplining manager
- Unfairness of the hearing
- New evidence subsequently coming to light.

Where an appeal against dismissal fails, the effective date of termination shall be the date on which the employee was originally dismissed.

Notes

Outcomes of formal meetings will be confirmed to the employee in writing.

A second representative may be invited to attend formal disciplinary meetings to act as witness and note-taker. Options for this second representative may include an independent HR Consultant.

The timescales will be adhered to wherever possible. However, where there are good reasons, e.g. the need for further investigation or the lack of availability of witnesses or companions, each party can request that the other agrees to an extension of the permitted timescale.

The council reserves the right to seek assistance from external facilitators (including from HAPTC (Hertfordshire Association of Parish and Town Councils) and SLCC (Society of Local

Council Clerks)) at any stage in the disciplinary procedure, in the interests of seeking a satisfactory outcome for all those concerned.

The grievance procedure should not be used for appeals against disciplinary decisions, as that is the purpose of the disciplinary appeals procedure. If, however, the employee has a complaint against the behaviour of a manager during a disciplinary case, they may raise it as a grievance. If necessary, the disciplinary procedure may be suspended for a short period until the grievance can be considered. Further, another manager may be brought in to deal with the disciplinary case.

This procedure is for guidance only and does not form part of employees' contractual rights. The contents may be subject to revision from time to time and will as a matter of routine be reviewed by the General Management Committee every four years.

Further Information

For further information or clarification on any part of this policy, please contact the Town Clerk of the Elstree and Borehamwood Town Council.

<p>Renewal Date of Policy: 18 April 2019 Authority: General Management Committee Review Period: every 4 years Next Review: April 2023</p>
