KNUTSFORD TOWN COUNCIL

DISCIPLINARY POLICY

CONTENTS

Introduction 3
General Principles 3
Definitions of Misconduct and Gross Misconduct 4
Informal Action 4
Investigation 5
Suspension 5
Hearing 6
Disciplinary Action 7
Dismissal 7
Appeal 8
Training 8
Sub-committees 9
Guidance for undertaking Investigations, hearings and appeals 10
- Investigations 10
- Disciplinary Hearing 11
- After the Hearing 12
- Appeals 12

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INTRODUCTION

1.1 The Council seeks to deal with disciplinary issues fairly and promptly. This procedure sets out the framework under which allegations of misconduct will be investigated and considered.

1.2 A disciplinary process can be stressful for everyone involved and different people may respond differently to stressful situations. Where possible, we will provide support to help employees through this process and, in particular, signpost them to the Employee Assistance Programme.

~~1.2~~1.3 While the procedure set out in this policy will be appropriate in most cases, there may be situations in which it is not practicable to comply with a particular requirement of it. When this happens, the Council will still ensure the matter is dealt with fairly and will pay particular attention to the need to give the employee every opportunity to explain their version of events.

1.4 The Council reserves the right not to follow this procedure in full for employees who are within their first two years [NB will be amended to 6 months from 1st January 2027] of employment with the Council.

1.5 The council has separate procedures for dealing with issues of poor performance.

GENERAL PRINCIPLES

2.1 Where it is appropriate, informal action will first be considered to resolve problems.

2.2 Disciplinary processes should be commenced and completed promptly and without unreasonable delay to any stage, including the holding of meetings, making decisions and confirming decisions.

2.3 No disciplinary action will be taken until a case has been fully investigated.

2.4 For formal action, the employee will be advised of the nature of the complaint against them and be given opportunity to state their case before any decision is made at a disciplinary meeting.

2.5 Where appropriate, written copies of evidence and witness statements will be provided to the employee before a disciplinary meeting.

2.6 An employee will not be dismissed for a first breach, except in the case of gross misconduct when the penalty is dismissal without notice and without payment in lieu of notice.

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2.7 There is a right to appeal against any decision of disciplinary action

2.8 Any action to be taken against the Town Clerk will be conducted by a sub-committee of the Personnel Committee.

DEFINITIONS OF MISCONDUCT AND GROSS MISCONDUCT

3.1 ~~Misconduct is defined as b~~Behaviour which is disruptive, disrespectful to colleagues, or which falls short of the requirements set by council policy, will be treated as misconduct under the disciplinary procedure.

3.2 While employees will not usually be dismissed for a first misconduct offence, a failure to remedy the behaviour or to adhere to required standards may ultimately lead to dismissal once appropriate warnings have been given.

3.3 Gross misconduct is behaviour which is fundamentally at odds with the employee's duty to the Council and their colleagues. Gross misconduct will usually result in dismissal without notice, or payment in lieu of notice, even in cases of a first offence.

3.4 It is not possible to list every example of gross misconduct which may arise, but the following provides an illustration of the sort of conduct that will fall into this category, some of which are then explained in more detail below:

a. Theft
b. Refusal to carry out reasonable instructions
c. Falsification of documents or information
d. Assault, physical violence or intimidating behaviour whilst acting or purporting to act on behalf of the council
e. Deliberate acts of discrimination or harassment
f. Insulting, indecent or offence behaviour towards any person whilst acting or purporting to act on behalf of the council
g. Bringing the council into serious disrepute
h. Wilful damage to property
i. Reckless behaviour posing a risk to health and safety
j. Any act or omission constituting serious or gross negligence/or dereliction of duty
k. Sleeping on duty
l. Any illegal act during working time or on council premises
m. Any act described as gross misconduct elsewhere in policy

INFORMAL ACTION

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4.1 Most minor acts of misconduct can be dealt with informally through discussions between an employee and their line manager. This may consist of management guidance or an informal warning given orally or in writing. These steps are an everyday part of the management process and no formal procedure needs to be followed in respect of them.

4.2 Where informal action of this kind fails to resolve an issue, or where the misconduct alleged is considered too serious, then the matter will be dealt with formally under this procedure.

INVESTIGATION

~~If it is alleged that an employee has committed misconduct, an investigation will be carried out aimed at gathering all of the relevant evidence.~~

5.1 Where there is an allegation of misconduct, an investigation should be conducted to establish the facts of the case - the purpose of the investigation is to establish if there is a case to answer, not to prove guilt.

5.2 An investigation may include:

a. Holding an investigation meeting with the employee and/or others
b. Collating evidence
~~a.~~c. Gathering witness statements

~~5.2 The employee may be interviewed as part of this investigation and will have the opportunity to point the investigator towards any evidence that is felt relevant.~~

5.3 Where possible, the investigation should be undertaken by a manager who is not involved in the case.

5.4 Employees should be invited to an investigation meeting in writing with five days' notice.

5.5 The right to be accompanied does not apply to any investigatory interview, however the council will aim to accommodate a request to be accompanied.~~.~~

~~5.3~~5.6 The investigator may recommend that an issue can be resolved informally or that a formal procedure should be followed.

SUSPENSION

6.1 Suspension is not a neutral act, and an ~~An~~ employee may only be suspended from duty on full pay whilst an allegation of misconduct is being dealt with to allow an unhindered investigation to take place~~,~~ or to protect the interests of the Council and its employees. It is likely suspension will only be used in serious cases of alleged misconduct. Alternatives to suspension must be considered before a decision to suspend is taken.

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6.2 ~~The Council will make every effort to ensure that a~~Any period of suspension ~~is~~ should be kept as short as possible.

6.3 During any period of suspension an employee may be instructed not to contact other members of staff except for the purposes of preparing for any disciplinary hearing. This is not a disciplinary sanction and should not been seen as a predetermination of any disciplinary process.

HEARING

7.1 Once the investigation has been carried out, the ~~investigating officer~~Investigator ~~-~~will make a decision about whether there is sufficient evidence to warrant a disciplinary hearing. If there is, the employee will be informed of this and an appropriate date for the hearing will be arranged. This will take place within normal working hours wherever possible.

7.2 To enable the employee to prepare, the Council will provide a copy of all written evidence which will be considered at the hearing in advance. The council will provide at least ~~two~~ five days' notice of the hearing.

In exceptional cases the Council may need to withhold the identities of certain witnesses or hold back sensitive items of evidence. This will only be done where it is considered necessary to protect individuals or the essential interests of the Council and every effort will be made to ensure that employees are given as much information as possible so that a fair hearing can be conducted.

7.3 An employee will have the right to be accompanied in accordance with the council's accompaniment policy. If the employee's chosen companion is not available at the time proposed for the hearing, the hearing will be postponed to a time proposed by the employee, subject to that being reasonable and not more than five working days after the original date.

~~7.3~~7.4 The purpose of the hearing will be to consider the evidence gathered during the investigation and to consider any representations made by the employee. Where possible, ~~T~~the hearing should be undertaken by a different person to who undertook the Investigation; this will usually be ~~conducted by~~ the employee's line manager or the Town Clerk.~~.~~

~~7.4~~7.5 The hearing will consider any evidence the employee chooses to present. Should witnesses be prepared to appear on the employee's behalf they will be permitted to do so provided that their evidence is relevant to the issues that need to be decided. The Council will not compel or require any employee to appear as a witness. The employee will be entitled to challenge any evidence presented but will not be entitled to cross-examine witnesses.

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7.57.6 The Council may need to proceed with a disciplinary hearing even if the employee is absent due to ill health or simply does not attend. Before hearing the matter in an employee's absence, the Council will attempt to arrange the hearing in such a way that the employee will be able to attend or to submit written representations to the hearing and/or to arrange for an appropriate representative to attend the hearing on their behalf.

DISCIPLINARY ACTION

8.1 After considering all of the evidence, including any submissions made by the employee, the ~~line~~ manager conducting the hearing will decide on the outcome. Decisions must be based on:

a. The findings of the investigation and meetings
b. What is fair and reasonable
c. What the council has done in any similar cases before
d. The employee's disciplinary record, general work record, work experience, position and length of service
e. Any mitigating circumstances

8.2 If misconduct is found to have taken place then the usual outcome will be a written warning. If misconduct was found to be small and not serious, the council may instead give an informal (verbal) warning.

8.18.3 A warning will stay active for a period of one year, after which it will not be taken into account in any future disciplinary action.

8.28.4 If a further instance of misconduct is found to have occurred whilst a written warning remains active, or if any misconduct is considered to be serious enough to warrant it, then subject to the formal process above being followed, the employee will be issued with a final written warning.

8.38.5 A final written warning will usually remain active for one year, but a longer period may be specified if the manager conducting the hearing feels that the circumstances warrant it.

8.6 An employee who is found to have committed further misconduct during a period covered by a final written warning will, following a hearing conducted in accordance with this procedure, generally be dismissed

8.48.7 In addition to a warning, other sanctions may be appropriate, these may include a requirement to undertake training, a requirement to make an apology, a change in duties, withholding of a salary increment or other reasonable actions.

DISMISSAL

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9.1 An employee will not normally be dismissed under this procedure for a single instance of misconduct unless a final written warning is already in place. Dismissal will usually be with pay in lieu of notice.

9.2 Where gross misconduct is found to have occurred then dismissal without notice or payment in lieu will be the usual outcome.

9.3 A decision to dismiss should not be taken without consulting the Town Clerk and advice having been sought from the council's HR advisors.

~~9.2~~9.4 Dismissal of the Town Clerk must be ratified by Full Council.

~~GENERAL~~

~~9.1 An employee may appeal any decision taken under this policy in accordance with the council's appeals policy.~~

~~9.2 With the exception of investigation meetings an employee has the right to be accompanied to meetings under this policy as per the council's accompaniment policy.~~

~~9.3 Any action to be taken against the Town Clerk will be conducted by a sub-committee of the Personnel Committee. Dismissal of the Town Clerk must be ratified by Full Council.~~

APPEAL

10.1 An employee may appeal any decision taken under this policy in accordance with the council's appeals policy, which requires an appeal be submitted within five working days of the decision

10.2 An appeal hearing should be held within ten working days of the appeal being submitted and provide at least five working days' notice of the meeting, time and venue

TRAINING

11.1 A disciplinary investigation, hearing or appeal may only be heard by a manager who has undertaken suitable training within the previous five years

11.2 In the case of sub-committee hearings and appeals, the appointed chair must have undertaken training .

11.3 The council will provide adequate training to managers and sub-committee members.

SUB-COMMITTEES

12.1 The council appoints six members to serve on sub-committees for the purposes of disciplinary hearings and appeals (etc). In the first instance, the first three members shall form a sub-committee.

12.2 Where a member is unable to serve on the sub-committee e.g. due to involvement in the matter or unavailability, the first reserve will take their place and so on.

12.3 Where the sub-committee is considering a disciplinary matter, it may commission an independent investigator to undertake the investigation stage.

12.4 If it is not possible to convene a sub-committee comprising the appointed sub-committee members and reserves, another member may be invited to sit on the committee. In this case, if the employee objects to the composition of the sub-committee, a meeting of the Personnel Committee shall be convened to formally appoint a sub-committee.

12.5 For the avoidance of doubt, where a sub-committee is hearing an appeal, its membership must be wholly different from any sub-committee which heard the original hearing.

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GUIDANCE FOR UNDERTAKING INVESTIGATIONS, HEARINGS AND APPEALS

The guidance in this section may be updated by the Town Clerk from time to time to reflect learning and best practice. For detailed guidance on the stages of the process, refer to the ACAS Code of Practice.

INVESTIGATIONS

An investigator should be given a terms of reference which will set out:

- what needs to be investigated
- whether they are expected to give recommendations at the end of the investigation
- how their findings should be set out
- who their findings should be reported to

The commissioner or investigator should make an investigation plan to determine:

- what needs to be investigated
- who is carrying out the investigation
- anyone who needs to be spoken with to find out about the issue (witnesses)
- any sources of evidence – for example work records, emails or CCTV recordings
- any time limits – for example CCTV footage being deleted or staff going on leave
- timeframes
- policies or organisation guidelines to follow
- setting out the importance of confidentiality
- any other relevant points or information

In conducing an investigation the investigator may hold investigation meetings to create a record, or may ask people to supply their own statement. Where there is a write up from an investigation meeting, the output should be validated (e.g. by the report being signed). If the employee or a witness refuse to sign it, the Investigator should establish why and if this cannot be resolved an investigator should still include the statement in their report but should state that the witness refused to confirm that it was an accurate reflection of the meeting.

Investigations should be conducted as soon as possible and without unreasonable delay. Where there is a delay, the employee should be advised of this.

The investigator must look at all the evidence fairly and should consider whether:

- there are any doubts over the credibility and reliability of the evidence
- any new evidence supports or contradicts evidence already collected
- it suggests any further evidence should be collected

During investigation meetings, the Investigator should explain:

- who is present and why
- the role of the investigator

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- the purpose of the meeting
- the need for confidentiality during the investigation
- a witness statement might be used in an investigation report
- who will see witness statements

During the meeting an investigator should:

- ask questions to gather the facts
- ask questions in a neutral, non-confrontational way
- record replies and any refusals to reply
- look for evidence that supports the information provided

At the end of the meeting an investigator should:

- check if there is anything else they think is important before ending the interview
- ask if there are other witnesses they think should be interviewed and why
- explain that they might need to be interviewed again
- explain that they will be provided with a copy of their witness statement shortly, for them to check and confirm that it is accurate

DISCIPLINARY HEARING

The manager conducting the hearing should ensure they have all the relevant facts available, including personnel records, investigation reports and (if applicable) written statements from witnesses.

Where possible, there should be someone present to take notes of the meeting and act as a witness to what was said.

The manager should introduce those present and explain the role of the accompanying person (if present). They should explain that the meeting is to consider whether disciplinary action should be taken and explain how the meeting will be conducted. The employee should be able to ask questions, present evidence and call witnesses. The accompanying person may also ask questions and should be able to confer privately with the employee, but should not speak for the employee.

Managers should listen carefully and be prepared to wait in silence for an answer as this can be a constructive way of encouraging the employee to be more forthcoming.

Managers should:

- ask the employee if they accept the allegation
- ask the employee if they have any explanation for the alleged misconduct
- ask the employee if there are any special circumstances which should be taken into account

If it becomes clear that the employee has provided an adequate explanation or there is no real evidence to support the allegation, bring the proceedings to a close.

Keep the approach formal and polite and encourage the employee to speak freely with a view to establishing the facts. A properly conducted disciplinary meeting should be a two-way process. Use questions to clarify the issues and to check that what has been said is understood. Ask open ended

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questions (e.g. what happened then?, only ask closed questions requiring a yes/no only when specific information is needed.

If new facts emerge, it may be necessary to adjourn the meeting to investigate them and reconvene the meeting when this has been done.

At the end of the meeting the manager should summarise the main points of discussion and ask if the employee has anything further to add.

Notes of the hearing must be kept.

AFTER THE HEARING

Decisions should be made on the 'balance of probabilities', meaning it will be considered whether, having weighed up the evidence, it is more likely than not that the misconduct has been substantiated.

A report should be prepared of the hearing which should summarise the discussion and the points raised by the manager and responses of the employee. The report will also outline the decision taken by the manager and the reasons for this.

The hearing outcome letter should set out:

a. The date and employee's name
b. The nature of the misconduct
c. The decision reached, the disciplinary penalty and how long it will last
d. The reasons for the decision
e. The likely consequences of further misconduct
f. Any further action to be taken
g. How to appeal the decision

APPEALS

An appeal hearing should follow a similar format to a disciplinary hearing.

The sub-committee should invite the employee to re-state the grounds for their appeal, focusing on:

a. What part(s) of the original decision they are appealing
b. Why they are appealing the decision e.g. why they feel the decision was wrong or unfair
c. What new evidence they are submitting
d. What they would like to happen

The sub-committee may undertake such investigations as it considers necessary to determine the outcome.

A report should be prepared of the hearing and investigations.

The sub-committee should determine if the appeal is upheld, partially upheld or dismissed and the reasoning.

An appeal outcome letter should set out:

a. The date and employee's name

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b. An outline of the employee's appeal
c. The decision reached on the appeal, stating (where possible) if it is upheld, partially upheld or dismissed
d. The reasons for the decision
e. Any further action to be taken

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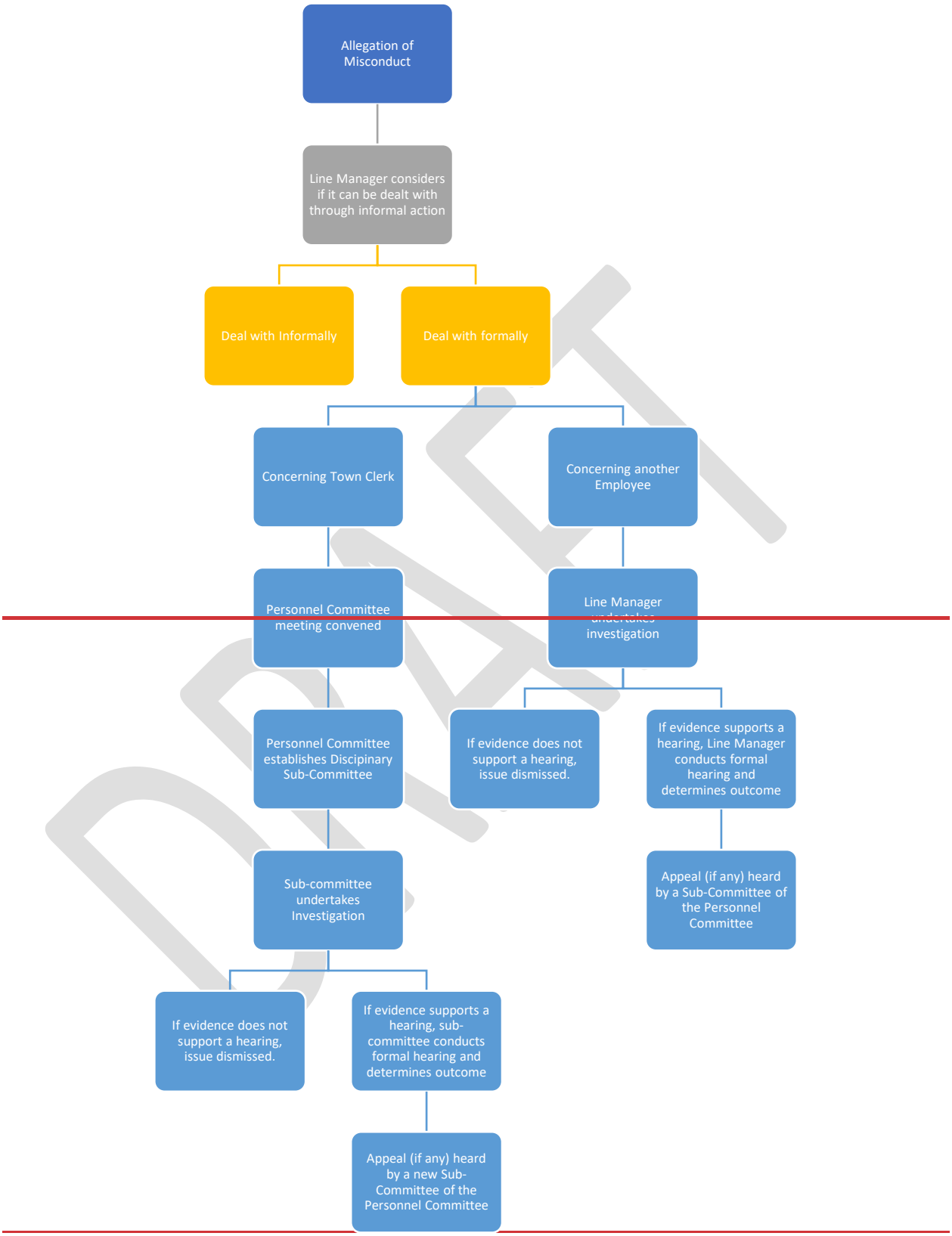
~~PROCESS TREE~~



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