



Scarborough Borough Council

Disciplinary Procedure

DOCUMENT CONTROL

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Owner	Chief Executive
Protective Marking	NOT PROTECTIVELY MARKED
Cabinet Approval Date	
Council Approval Date	
Policy Date/Period	
Policy Review Frequency	Annually

REVIEW HISTORY

Date	Reviewed By	Version	Any Revisions?
04/11/2015	Elaine Blades		None
23/11/2017	Roger Paterson		
30/11/2017	Roger Paterson		

REVISION HISTORY (only required where changes made)

Date	Revised By	Version	Description of Revision
01/01/2010	Elaine Blades	0.1	Creation of Policy
01/04/2013	Elaine Blades	0.2	

DOCUMENT REVISION APPROVALS

Version	Approval	Date
	Cabinet	
	Council	



1.0 INTRODUCTION

- 1.1 In any organisation it is essential that certain standards of conduct be maintained in order to ensure the smooth running of the organisation, the well being of employees and to maintain good employee relations.
- 1.2 It is the policy of the Council to help and encourage all employees to achieve and maintain acceptable standards of conduct in relation to their employment with the Council. In order to assist with this, the following procedure has been developed and should be followed when dealing with potential or actual misconduct, in order to ensure that all employees receive consistent, fair and equal treatment.

2.0 WHO DOES THE PROCEDURE APPLY TO?

- 2.1 This procedure applies to all employees, whether part-time or full-time, temporary or permanent except those on Chief Officer and Chief Executive Conditions of Service.

3.0 WHAT SHOULD THE PROCEDURE BE USED FOR?

- 3.1 The procedure is to be used in circumstances where it is alleged that an employee has committed an act of misconduct or gross misconduct.
- 3.2 This procedure should not be used for issues relating to general probationary period issues, sickness absence or performance issues which are covered by separate procedures and guidelines.

4.0 GENERAL PRINCIPLES

- 4.1 Individual employees have a personal responsibility to maintain high standards of conduct during their employment with the Council. In addition, managers/supervisors have a responsibility to ensure that employees fully understand the standards of conduct expected by the Council and to help, encourage and ensure that those standards are achieved and maintained by the employees they are responsible for.
- 4.2 Managers should tackle perceived conduct matters quickly, as a normal aspect of management.
- 4.3 Disciplinary action is not an appropriate first response to a first time minor act of misconduct and no employee will be dismissed for a first breach of disciplinary rules except in the case of gross misconduct.
- 4.4 No disciplinary action will be taken against an employee until the allegation has been the subject of a reasonable investigation.



DISCIPLINARY PROCEDURE

- 4.5 The employee will be advised of the nature of the complaint against him or her and have the opportunity to state his/her case before a decision is made.
- 4.6 An investigation may necessitate the suspension from duty of the employee concerned.
- 4.7 From the formal investigation stage onwards, an employee will have, and be reminded of, the right to be accompanied by a trade union representative or work colleague.
- 4.8 The levels of disciplinary warning given will reflect the seriousness of the misconduct.
- 4.9 This procedure will aim to promote fairness and consistency in the treatment of individual employees who are alleged to have committed an act of misconduct or gross misconduct through providing a framework for enabling appropriate action to be taken.
- 4.10 An employee has the right of appeal following any formal disciplinary action.
- 4.11 No formal disciplinary action will be taken against a recognised Trade Union Representative until the circumstances of the case have been discussed with the Full Time Official of the Union concerned.

5.0 WHAT CONSTITUTES MISCONDUCT/GROSS MISCONDUCT?

- 5.1 Examples of misconduct and gross misconduct are attached at Appendix 1 and 2.

6.0 ACCOMPANIMENT/REPRESENTATION

- 6.1 Employees are entitled to be represented by a Trade Union Representative or a work colleague at all stages of this procedure from the formal investigation onwards. No right of representation exists during preliminary enquiries or meetings called to inform the employee that an allegation has been made and/or that they are to be suspended. Additionally no right of representation exists at management meetings, and/or informal resolution meetings. However, reasonable requests for accompaniment will not be unduly refused as long as such requests do not cause a delay.
- 6.2 Representatives will attend investigatory interviews in the capacity of an adviser and will not participate in the interview other than to advise the employee. The representative has the right to address any subsequent hearing, but not to answer questions on the employee's behalf unless agreed by management.
- 6.3 Representatives may not conduct a separate investigation or cross-examine identified witnesses prior to a disciplinary hearing. They may contact Council employees and ask them to provide witness statements, only where they believe



that the person has evidence to offer on behalf of the employee against whom the allegation has been made and where those employees have not already provided a statement or attended an investigatory interview.

- 6.4 With the exception of officials of independent Trade Unions, only Council employees will be allowed to represent employees during the disciplinary process i.e. solicitors, family members etc. (unless employed by the Authority) will not be allowed to attend meetings, participate in proceedings or act on behalf of an individual in any way.
- 6.5 It is the employee's responsibility to arrange representation and ensure that documentation is passed on to their representative in good time. Where expressly ask to do so by the employee, the investigation team and/or Director (or his/her nominated officer) may send a copy of any documentation directly to the employee's representative, although this will not be done as a matter of course.

7.0 EMPLOYEE SUPPORT

- 7.1 It is recognised that employees who are the subject of disciplinary action, the manager bringing the action, or witnesses called by either party, may find the experience uncomfortable or stressful. In recognition of this, support mechanisms will be made available to employees throughout the disciplinary process.

8.0 TRADE UNION OFFICIALS

- 8.1 The same standards of behaviour apply to all employees, including representatives of the recognised Trade Unions, although where allegations are made against a Trade Union Representative the matter will be discussed with an appropriate full-time official of that union at the earliest practical opportunity.
- 8.2 Normally this will be before the formal investigation commences and, in the case of allegations of gross misconduct, this will normally take place prior to the suspension of the employee. However it is recognised that there may be occasions where this is not possible. In such cases, the matter will be discussed with an appropriate full-time Official of that Trade Union at the earliest practical opportunity, but this may be after the employee has been suspended and/or the formal investigation has commenced.

9.0 CRIMINAL OFFENCES

- 9.1 Employees must inform the Council of any convictions brought against them. Although the nature of any offence may not be relevant to the post, action may be taken against employees who fail to declare convictions that later come to light (including spent convictions for employees working in posts that are exempt from the Rehabilitation of Offenders Act).



Offences Outside of Work

- 9.2. Criminal offences occurring outside work do not automatically bring the employment contract into question. Other than in the circumstances outlined above, an employee will not be dismissed or otherwise disciplined merely because they have been charged with or convicted of a criminal offence. In such cases disciplinary action will be considered on the basis of whether the employees conduct warrants action because of its employment implications. Each case will be treated on its own merits.
- 9.3 In some cases, the nature of an offence may call into question an employee's integrity rather than their immediate ability to do the job. In these circumstances it may be fair to commence disciplinary proceedings. For example, if an employee was accused of committing a sexual offence.
- 9.4 Any disciplinary action will not be unduly delayed or postponed because of pending proceedings or before the outcome of any prosecution is known, as the outcome of any external investigation will not impact on the decision of the disciplinary hearing, unless the Police advise the Council otherwise.
- 9.5 Where the nature of the offence may not justify disciplinary action, for example, off duty conduct which has no bearing on employment, but the employee may not be available for work because they are in custody or on remand, the employee will be deemed to be on unpaid leave. Whether or not an employee is able to attend work, an internal investigation will be carried out to consider the available facts and whether or not there are any employment implications.
- 9.6 Where an employee receives a custodial sentence an internal investigation will be carried out to consider the available facts and whether or not there are any employment implications. Where deemed necessary a disciplinary hearing will be convened and the appropriate Director, or his/her nominated officer, will decide whether formal disciplinary action is appropriate. Such a decision will only be taken further to and in accordance with advice from a member of the Human Resources Team and following any representations made by the employee's representative.

Reporting to the Police

- 9.7 Certain allegations of misconduct will be reported to the Police for example, theft, fraud or sexual offences. Disciplinary action will not be unduly delayed or postponed because of pending proceedings or before the outcome of any prosecution is known as the outcome of any external investigation should not impact on the decision of the disciplinary hearing. The decision to report an allegation to the Police will be made by the appropriate Director in conjunction with the HR Manager, and where necessary Internal Audit.



10.0 INFORMAL RESOLUTION

- 10.1 Many potential disciplinary issues can be resolved informally; a quiet word is often all that is required. There will however be situations where matters are more serious or where an informal approach has been tried but is not working.
- 10.2 Managers/supervisors are expected to draw any deficiencies to the attention of employees under their control, as this can lessen the possibility of recourse to the formal procedure.
- 10.3 A summary of the informal resolution and actions agreed should be recorded by completing Meeting Form (Appendix 3) and signed by both parties with a copy being sent to Human Resources.
- 10.4 If informal action does not bring about an improvement or the misconduct is considered too serious to be classed as minor, formal action will be taken (see Section 16 – Levels of Disciplinary Action).

11.0 MEDIATION

- 11.1 Where appropriate employers and employees are encouraged to seek to resolve disciplinary issues in the workplace. Where this is not possible employers and employees should consider using an independent third party to help resolve the problem. The third party need not come from outside the organisation but could be an internal mediator, so long as they are not involved in the disciplinary issue. In some cases, an external mediator might be appropriate. Please refer to the Mediation Guidelines.

12.0 PRELIMINARY ENQUIRIES

- 12.1 Before undertaking a formal disciplinary investigation, a preliminary enquiry should be carried out, normally by the manager/supervisor of the employee against whom the allegation has been made. If however, due to the nature of the allegation made, this is not appropriate then another manager/supervisor must be nominated to conduct the preliminary enquiry.
- 12.2 A preliminary enquiry enables a manager/supervisor to establish quickly if an incident has taken place as reported and/or if there are sufficient grounds for a formal disciplinary investigation to be carried out. The preliminary enquiry will also establish if the allegation is deemed to be misconduct or gross misconduct under this procedure. The manager/supervisor conducting the preliminary enquiry will report to the findings to the appropriate Director and the Human Resources Team.
- 12.3 From the information that is collected as part of the preliminary enquiry, the Director, in conjunction with a member of the Human Resources Team will decide whether to drop the matter, deal with the matter using another policy or procedure,



arrange informal coaching or counselling, resolve the issue informally, suspend the employee or arrange for a formal disciplinary investigation to take place.

13.0 PRECAUTIONARY PAID SUSPENSION

- 13.1 In appropriate circumstances (e.g., where the matter under investigation is one of potential gross misconduct, or to safeguard the personal welfare of employees, clients or members of the public) an employee will be suspended with pay in order that a full investigation may be conducted.
- 13.2 The decision to suspend an employee can only be made by a Director in conjunction with the HR Manager, although another nominated employee can enact the suspension on their behalf. The act of suspension should take place as soon as reasonably practicable after the decision has been taken, which must be as soon as reasonably practicable after the allegation(s) has come to light.
- 13.3 Normally precautionary paid suspension will only be undertaken following a preliminary enquiry. However, in exceptional cases it may be necessary, due to the nature of the allegations, the timescales involved and/or the risks associated with the allegation(s), the employee may be suspended prior to a preliminary enquiry being conducted. It may also be necessary to suspend the employee part of the way through an investigation, if the investigation brings to light that the allegation is more serious than previously thought.
- 13.4 Paid suspension during a formal investigation does not in itself constitute a disciplinary penalty and should not be construed to imply that a decision has already been taken. Employees suspended from duty will be required to be available to attend any meetings on request. Employees placed on precautionary paid suspension will not be permitted to enter their place of work whilst on suspension unless specifically asked to do so. Employees placed on precautionary paid suspension are also not permitted to discuss the case with any other Council employee other than their Union Representative, or their nominated work colleague, and the investigation team.
- 13.5 Whilst on precautionary paid suspension, employees will receive normal contractual pay.

14.0 INVESTIGATION

- 14.1 Prior to any disciplinary action being taken, a full investigation will be carried out into the allegations made. The manager/supervisor will conduct the investigation with appropriate assistance and advice from a nominated member of the Human Resources Team.
- 14.2 The investigation team will advise the employee that an investigation is to be undertaken and arrange to meet with them in order to conduct an investigatory interview.



- 14.3 The investigation should include interviewing all witnesses, including clients and members of the general public and appropriate statements should be obtained, signed and dated.
- 14.4 Once the disciplinary investigation has been completed, the investigation team will compile a report for the appropriate Director and HR Manager, detailing the information collected in respect of the allegations made and making a recommendation in terms of the appropriate way forward. The Director and HR Manager will consider the information within the report and decide if there is sufficient evidence to proceed to a disciplinary hearing.
- 14.5 Where there are not sufficient grounds to proceed to a formal disciplinary hearing this must be confirmed to the employee in writing and where necessary any suspension lifted with immediate effect.

15.0 DISCIPLINARY HEARING

- 15.1 The hearing will be chaired by the appropriate Director or his/her nominated officer, supported by a member of the Human Resources Team. However, where there is a possibility of dismissal a Director must hear the case.
- 15.2 Employees must be given at least five working days notice, confirmed in writing, of the time, date and place of any formal disciplinary hearing, together with full and precise details of the complaint. The employee should also be advised that he/she has the right to be accompanied by a Trade Union Representative or work colleague and whether or not the allegation, if established, would constitute gross misconduct.
- 15.3 Any relevant documentation from both sides, including witness statements must be exchanged at least five working days prior to the disciplinary hearing. Should either side wish to submit an additional piece of evidence at the hearing the chairperson will decide on its admissibility. If the submission is allowed there will either be an adjournment or a postponement in order to allow the other side time for sufficient consideration.
- 15.4 Witnesses may be asked to attend the hearing by either party if they are able to provide information relating to the specific allegation. Arrangements for witnesses to attend are the responsibility of the party who has requested that they be present.
- 15.5 At any disciplinary hearing, each side should be permitted to present its case (the investigation teams case first, followed by the employee's case), to call witnesses, where appropriate, and to ask questions of the other side. Witnesses shall not be present at the hearing until they are required. The investigation team and the employee (or his/her Representative) then have the opportunity (in that order) to sum up their cases, if they wish to do so.



- 15.6 When the investigation team and the employee (or his/her Representative) have presented their cases, they shall withdraw from the hearing. The Director (or his/her Representative) shall then reach a decision on the complaint, based on the evidence presented at the hearing. Both parties will be recalled and the decision will be given verbally. Only where there are exceptional circumstances may the decision be deferred to a date and time to be specified.
- 15.7 All decisions arising from disciplinary hearings will be notified in writing to the employee concerned within five working days of the date of the hearing.

16.0 LEVELS OF DISCIPLINARY ACTION

- 16.1 In considering the appropriate penalty, the Council will have regard to fairness, objectivity and consistency. Each case will be judged solely on its merits.
- 16.2 The levels of disciplinary action available to the Director (or his/her nominated officer) are as follows:-

Stage 1 – First Warning

- 16.3 A first warning will normally apply where informal resolution is viewed as inappropriate and the facts call for formal disciplinary action for a minor infringement or lapse and there is no current formal warning, oral or written in place. The employee will be advised that this constitutes the formal stage of the disciplinary procedure and this decision will be confirmed in writing and held on his/her personnel record.
- 16.4 First warnings will normally be disregarded for disciplinary purposes after twelve months, subject to there being no further infringements within that period.

Stage 2 – Final Written Warning

- 16.5 A final written warning will normally apply where there is a current formal written warning on file and there is further misconduct or where there is no current formal verbal or written warning on file but, given all the circumstances of the case, more severe action is warranted than a formal written warning.
- 16.6 A final written warning will be given to the employee and confirmed in writing and will normally be disregarded for further disciplinary purposes after two years, subject to their being no further infringements within that period.

Stage 3 – Dismissal or other sanction

Dismissal with Pay in Lieu of Notice

- 16.7 Dismissal with pay in lieu of notice will normally apply where the employee is found to have committed an act of misconduct and there is a current written warning on



file. The employee will be advised of the Director's decision at the hearing and this will be confirmed in writing.

Summary Dismissal (ie without notice)

- 16.8 Summary dismissal will normally apply where the employee has been found to commit an act of gross misconduct. The employee will be advised of the Director's decision at the hearing to terminate the contract of employment with immediate effect must be confirmed in writing.

Other Sanctions

- 16.9 Other actions, for example demotion or payment in restitution of theft or fraud, can be applied where the Director (or his/her nominated officer) deems them appropriate to the circumstance of the case. The penalty imposed must be reasonable and proportionate to the misconduct.

17.0 APPEAL PROCESS

- 17.1 It is an employee's right to appeal against any formal action taken against them or decision taken to dismiss them. For further information please refer to the Appeals Procedure

18.0 MANAGEMENT OF OUTCOME

- 18.1 It is the responsibility of Chair of the disciplinary hearing to communicate disciplinary decisions to the appropriate individuals involved in the case, for instance the employee's line manager, and any other individual who is required to take any action as a result of the decision.
- 18.2 Thereafter, it is the responsibility of the employee's manager/supervisor, in conjunction with their manager, to manage the outcome of any disciplinary process.

19.0 RECORDS

- 19.1 Records of disciplinary allegations, investigations etc. and other associated documentation will be kept in a locked filing cabinet by the Human Resources Team. This will include documentation associated with unsubstantiated allegations, preliminary enquiries and investigations, even where it is found that there is no case to answer. Only authorised employees will have access to the records.
- 19.2 Copies of warning letters will be kept on the employee's personal file. After the expiry of the warning, the warning will remain on the employee's personal file, but will be disregarded in respect of future disciplinary warnings.



20.0 FURTHER INFORMATION

- 20.1 Further information on this procedure can be obtained from the Human Resources Team in the first instance.
- 20.2 Employees who are members of a Trade Union may also obtain further information from their representative.

EXAMPLES OF MISCONDUCT

The following are acts of misconduct that would normally attract one or more of the penalties set out in section 16 (except for summary dismissal):-

- ◆ A series of acts of minor misconduct or a repeated act of misconduct previously dealt with under the informal resolution stage of the procedure.
- ◆ Failure to carry out reasonable instructions or meet reasonable requests from managers.
- ◆ Insubordination.
- ◆ Restriction of effort, or a failure to carry out duties diligently, or behaviour hindering, or likely to hinder work.
- ◆ Misconduct in relation to official documents (except where personal gain results, in which case gross misconduct will apply).
- ◆ Improper and/or unauthorised disclosure of Council information.
- ◆ Inappropriate behaviour not serious enough to be classed as gross misconduct.
- ◆ An act in contravention of the employee code of conduct, which would not normally warrant dismissal.
- ◆ Being an accessory to an offence that would normally result in disciplinary action short of dismissal.
- ◆ Unauthorised absence from duty or unacceptable reason for absence or failure to adhere to working hours.
- ◆ Unauthorised employment.
- ◆ Unauthorised presence on Council property.
- ◆ Failure to follow Council procedure.
- ◆ Abusive behaviour towards another employee or member of the public.
- ◆ Minor violation of the Council's Electronic Communications Policy.

This list is neither exclusive nor exhaustive, and disciplinary action may be taken in relation to other offences. The above may also, depending on the circumstances of the case, constitute gross misconduct.

EXAMPLES OF GROSS MISCONDUCT

The following may constitute gross misconduct for which the normal penalty would be summary dismissal:-

- ◆ Theft, fraud.
- ◆ Deliberate falsification of records e.g. flexi time sheets, expense claims etc.
- ◆ Physical violence.
- ◆ Bullying or harassment and/or the intimidation of another employee or member of the public.
- ◆ Deliberate damage to property.
- ◆ Serious insubordination.
- ◆ Misuse of the Council's property or name.
- ◆ Bringing the Council into disrepute or conduct liable to bring the Council into disrepute.
- ◆ Incapability whilst on duty brought on by alcohol or non-prescribed drugs.
- ◆ Negligence, which causes or might cause loss, damage or injury.
- ◆ Infringement of health and safety rules likely to cause danger to life or limb.
- ◆ Serious breach of confidence (subject to the Public Interest (Disclosure) Act 1998).
- ◆ Failure to wear or use health and safety equipment or protective clothing.
- ◆ Soliciting for, or accepting, unauthorised gratuities.
- ◆ Unfair discrimination, as identified in the Council's equalities policy.
- ◆ Abuse of authority and/or official position.
- ◆ An act in contravention of the employee code of conduct, which is so serious that it would normally warrant dismissal.
- ◆ Inappropriate personal or physical relationships with customers.
- ◆ Unauthorised use of a council vehicle, driving a Council vehicle without an appropriate driving licence.
- ◆ Any criminal offence, which has or may have an adverse effect on the Council, other employees or customers.
- ◆ Gross neglect of duty.
- ◆ Failure to follow Council procedure causing loss or damage to the Council.
- ◆ Serious violation of the Council's Electronic Communications Policy.
- ◆ Serious violation of the Council's Social Networking and Blog Policy.
- ◆ Any other act causing a permanent breakdown of the implied relationship of confidence and trust between the Council and employee.

This list is neither exclusive nor exhaustive, and disciplinary action may be taken in relation to other offences.



MEETING RECORD

PRESENT

Employee	Line Manager	HR
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Represented: YES/NO

Name of Representative

Status of Representative

Stage:

Quiet Word 1st Written Warning Final Written Warning Dismissal

Reason for Action

Performance Attendance Conduct other

Details:.....
.....
.....

Review: YES/NO If yes state when

FURTHER RELATED INCIDENTS MAY LEAD TO FORMAL ACTION BEING TAKEN AGAINST YOU

Employee Comments:
.....
.....

Signed: Employee	Date:
Signed: Representative for the employee	Date:
Signed: Line Manager	Date:
Signed: HR Representative	Date:

Where a formal sanction has been issued. Right of appeal should be made in writing to the HR Manager within 10 days of receipt of this decision.

Copy to employee <input type="checkbox"/>	Copy to Manager <input type="checkbox"/>	Personal File <input type="checkbox"/>
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