



# **MORECAMBE TOWN COUNCIL**

## **DISCIPLINARY POLICY & PROCEDURE**

*Adopted by Council on*

*15<sup>th</sup> September, 2011 Minute No. 54*

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## **PART 1 – DISCIPLINARY POLICY**

### **Policy Statement**

Morecambe Town Council is committed to ensuring the fair treatment of all its employees and to helping and encouraging them to achieve and maintain acceptable standards of conduct. It is hoped that employees will never find themselves involved in disciplinary action, and this document is intended to help them avoid ever being in that position. It is also an important source of information if employees think that someone else is acting in a way that discredits the organisation, they are urged to make use of the *Whistleblowing Policy* to report behaviour that may fall short of the Council's standards.

This policy should not be viewed as primarily as a means of imposing sanctions. Rather it should be viewed as a way of helping and encouraging improvement amongst employees whose conduct or standard of work is unsatisfactory. The Council will wherever possible, seek to resolve issues using the informal procedure.

### **The Council will achieve this by:**

- Making sure that Council employees are provided with information about expected standards of conduct within the Code of Conduct for Employees and the Disciplinary Policy and Procedure.
- Providing a consistent and fair mechanism for addressing unacceptable behaviour and conduct and, wherever possible, enabling the employee to improve within the organisation.
- Ensuring that where this is not possible, dismissal is within the law.
- Ensuring that everyone involved is aware of his or her respective roles and responsibilities.
- Ensuring that issues relating to conduct are dealt with in a way that is non-discriminatory and in accordance with the Council's *Equal Opportunities Policy*.
- Ensuring that employees are dealt with consistently and the disciplinary procedure is applied fairly across the Council.

### **1. Scope**

1.1 This document forms part of the contract of employment.

1.2 The Council's *Disciplinary Policy and Procedure* applies to all Council employees except:

- Casual workers;
- Employees who are still subject to a probationary period where dismissal arises from unsuitability for confirmation of appointment; and Employees whose dismissal arises from:
  - The completion/termination of a fixed term or temporary period of employment for which the employee has been specifically engaged (via a fixed term or temporary contract of employment);
  - Where serious incapability is brought on by alcohol or drug abuse;
  - A redundancy situation.

## 2. Unacceptable Behaviour

### 2.1 Examples of what may constitute **misconduct**.

It is unlikely that any set of definitions can cover all circumstances but examples of what will normally be considered **misconduct** leading to formal disciplinary action include (please note that this list is non-exhaustive):

- Minor breaches of the Code of Conduct for Employees.
- Failure to obey reasonable instructions, including the requirements of Council policies standing orders and minor breaches of the financial regulations.
- Unauthorised absence including abuse of the Council's sickness scheme and annual leave provisions.
- Sub standard performance including poor treatment of Council customers.
- Timekeeping problems.
- Health and safety offences.
- Equalities offences.
- Insubordination.
- Misuse of Council facilities or property including computer facilities e.g. inappropriate use of the Internet.
- Failure to treat colleagues with an appropriate level of dignity and respect.

### 2.2 Examples of what may constitute **gross misconduct**.

Again, it is unlikely that any set of definitions can cover all circumstances but a list of examples of **gross misconduct**, which are serious and are normally considered so unacceptable that they may lead to dismissal include (please note that this list is non-exhaustive):

- Theft, fraud and deliberate falsification of records including timesheets.
- Physical violence or making threats of physical violence.
- Deliberate damage to property or belongings.
- Serious infringement of health and safety rules and principles.
- Serious infringement of equal opportunity rules and principles.
- Serious acts of insubordination i.e. where the employment relationship has been seriously undermined.
- Serious breaches of the Code of Conduct for Employees or other published policies of the Council.
- Fraudulent misuse of the Council's property or name.
- Serious negligence whether or not loss, damage or injury is caused.
- Serious breach of confidence and trust including bringing the authority into disrepute.
- Harassment or bullying, of other employees or members of the public.
- Failing to manage effectively by knowingly permitting harassment or bullying to take place.

### **Acts of gross misconduct are likely to lead to dismissal.**

Dismissal may also occur following repeated warnings being issued due to the repetition or accumulation of less serious offences before the prescribed time limits for those offences has expired.

## 2.3 Conduct Outside of Working Hours

The Council advises that “*personal conduct outside office hours which could conceivably be regarded as undermining your ability to carry out your duties may lead to the Authority seriously considering your suitability as an employee.*” Conduct regarded in this way or conduct which undermines the confidence which the Council needs in its employees or which it would not be reasonable for an employer to ignore, even though it takes place out of working hours, will be dealt with by way of this policy and procedure.

## 3. Job Performance

3.1 The requirements for each employee in their role are specified through:

- Job descriptions;
- Targets and objectives set during employee development and performance appraisal interviews;
- Discussions during probationary period reviews;
- Ongoing instructions and requests from managers/the Council as part of line management;

3.2 Problems with under performance or a failure to meet the required performance standards will normally be dealt with by referring to the Council’s Appraisal and Performance Review Policy. Any issues of sub standard performance that result from deliberate misconduct will be dealt with using the *Disciplinary Policy and Procedure*.

## 4. Representation

4.1 Employees have a right to be accompanied by a representative or friend on occasions when they are required or invited to attend a disciplinary investigation interview or a formal disciplinary hearing. It is the responsibility of the employee to make the request to be accompanied. All reasonable requests to be accompanied will be accommodated but should not unduly delay the process. A request to be accompanied by a representative cannot delay the process.

4.2 The right to be accompanied does not extend to attendance at informal meetings, interviews or discussions. So long as the informal interview or discussion will not result in any formal action, it is not considered good practice for an employee to be accompanied, as matters at an informal stage are often best resolved directly between manager and employee.

## **PART 2 – DISCIPLINARY PROCEDURE**

*This part of the document provides general procedural advice but does not exclude the possibility of dealing with unusual cases in slightly different ways, whilst still working within employment legislation and remaining mindful of best practice.*

### **THE INFORMAL PROCEDURE**

#### **1. The Informal Procedure**

1.1 There will be occasions when behaviour falls short of what is expected, but is not serious enough to warrant formal disciplinary action. Where there are minor faults in the employee's conduct, the matter should be dealt with promptly through informal discussion between the employee and line manager.

1.2 The purpose of an informal discussion will be to:

- Ask for an explanation of what has happened;
- Explain why the behaviour was unacceptable;
- Discuss the required improvements;

1.3 Following the informal discussion managers will:

- Detail the nature of the problem, why the behaviour was unacceptable and the required improvements in a letter to the individual;
- Notify them that future incidents may lead to formal action and that the notes of this incident will be retained.

1.4 If necessary, managers can issue an informal verbal warning that failure to improve or a repetition of the behaviour may lead to formal action. This should be recorded in meeting notes or a letter so that the employee is clearly aware of it.

1.5 When an employee's behaviour improves significantly as a result of informal action managers should write again to employees in order to acknowledge informally that behaviour and/or conduct has improved.

1.6 The following procedure will be used if conduct does not improve, if there is a repeated pattern of behaviour through the informal procedure or if the disciplinary matter is more serious than a minor fault.

### **THE FORMAL PROCEDURE**

#### **2. Preliminary Disciplinary Interview**

2.1 The purpose of a preliminary disciplinary interview is to gather evidence to allow managers to decide whether or not a disciplinary investigation or formal disciplinary hearing should take place. Preliminary interviews are appropriate where line managers are unsure as to whether or not allegations have sufficient substance to warrant a disciplinary investigation or formal disciplinary hearing by an appropriate person.

2.2 If a line manager becomes clear that an investigation is merited, the preliminary interview should be terminated. If the allegation has the potential to be considered gross misconduct

then the preliminary interview should be carried out by the Chairman of the Council to decide whether or not suspension is warranted.

2.3 Employees have the right to be accompanied at the preliminary disciplinary interview, although this should not delay the process unduly, and they are expected to inform the line manager who will be accompanying them. The line manager will be accompanied at the meeting by the Chairman of the Council and if the matter relates to the Town Clerk, the Chairman of the Council will be accompanied by another member of the Personnel Committee.

2.4 The purpose of the interview will be to:

- Present the allegation clearly to the employee and provide them with an opportunity to respond.
- Make it clear to the employee that it is not a disciplinary hearing but a 'fact finding' meeting.

2.5 If, having heard the employee's response to the allegations, the manager believes there is justification for a disciplinary investigation or a formal disciplinary hearing, he/she will inform the employee and the preliminary interview will be terminated.

2.6 If, during the interview, it becomes apparent that the allegation may constitute gross misconduct, it may be appropriate to suspend the employee.

2.7 A note of the interview will be made and the employee should be informed that this might be used in evidence if disciplinary action follows, although it should be made clear that it is the manager's personal record of the meeting.

2.8 In exceptional cases the facts may be so straightforward that an investigation is not appropriate. In such cases, the line manager/Chairman of the Council may move straight to a formal disciplinary hearing. In these circumstances, it may be appropriate for the manager who carried out the preliminary interview to also hear the case at a formal disciplinary hearing.

### **3. Suspension**

3.1 Suspension is not a disciplinary sanction but is intended to protect either or both the employee's and the Council's interests. It is not possible to prejudge cases without them being investigated and, therefore, suspension should never be seen as an assumption that someone is guilty.

3.2 Suspension may be appropriate for the following reasons:

- Where there is an allegation that could constitute gross misconduct and there is no immediate evidence to disprove the allegation;
- Where allowing the employee to remain at work may compromise the integrity of the investigation;
- Where working relationships have broken down; or
- Where it is considered that there are risks to the Council's property or responsibilities to other parties.

3.3 Suspension will normally take place as soon as a serious allegation comes to light. Paragraph 5.2 below deals with the Council's commitment to reviewing the need for suspension during the investigation process.

3.4 Only the Chairman of the Council has the authority to suspend employees.

3.5 As soon as there is a case to suspend, an employee the line manager or Chairman of the Council should speak with the employee. Employees will be advised that a representative or friend may accompany them. However, it would not be reasonable to expect suspension to be delayed awaiting representation.

3.6 The employee will be seen in person, wherever possible, and the meeting will cover the following:

- Details of the allegation made against them;
- The conditions attached to suspension, i.e. contact will be through a named officer only; they are not able to contact colleagues or external work contacts, media etc.; they are not able to visit Council premises; and are not normally able to undertake work for other organisation whilst suspended;
- An opportunity to be accompanied to remove personal possessions from the workplace (this may need to be outside normal working hours if the employee prefers or other employees are involved);
- How the investigation will be conducted, and when an investigating officer will contact them (this should be no more than one week after the suspension);
- How suspension affects pay. Payment will only be withheld in exceptional circumstances and employees will normally receive 'normal' pay during a period of suspension;
- The requirement to pass on information about outstanding work;
- The handing over of keys, identity card and other Council property, if appropriate. The reason for suspension and the conditions attached to it will be confirmed in writing to the employee within 2 working days.

3.7 Although this will clearly be a trying time for employees, they are expected to act with discretion. Employees who are suspended from work are reminded of the importance of complying with the conditions attached to the suspension. Suspended employees will be given the name of a work contact on whom they should rely on for contact with work, should this be necessary. If, for example during an investigation, an employee feels that additional witnesses should be approached, they must notify the named contact or investigating officer rather than approach that person and obtain evidence directly. A failure to comply with the terms of suspension may have serious consequences.

3.8 Suspension without pay.

In extremely rare circumstances suspension may be without pay. This is unlikely to be a frequently used sanction but may be appropriate in certain circumstances. Such circumstances may include employees going into Police custody suspected of a serious criminal offence where the Council is unable to follow its own procedures for carrying out investigations. Another example is where a serious incident has occurred and the facts of the case do not appear to be disputed. In the event that suspension without pay is applied and this turns out to have been an improper decision, pay will be reinstated from the date of the decision being made.

† The cost of providing cover for an employee who is suspended should be met from existing resources.

## **4. Disciplinary Investigations**

At the start of the investigation process, an Independent Investigating Officer will be appointed.



It will be the role of the Reviewing Officer to ensure that the Council's procedure for handling disciplinary investigations is followed and that delays in process are kept to a minimum. A disciplinary investigation will cover the initial complaint plus any other issues that may arise as a result of the investigation that fall within the scope of the disciplinary policy and procedure.

#### 4.1 The Investigating Officer

An independent officer from the Council who is trained or experienced in this type of work will conduct the disciplinary investigation. Preference should be given to persons with experience relevant to any complex allegation, e.g. financial irregularities. However, wherever practical the line manager should be the Investigating Officer.

The Investigating Officer is impartial. He/she will prepare the report using the facts of the case as they are presented to him/her and will not advise those receiving the report about whether or not he/she believes there is a disciplinary case to answer.

#### 4.2 Reviewing Suspension during an Investigation

It is not the job of the Investigating Officer to decide whether or not there is a disciplinary case to answer. However, if the employee under investigation has been suspended to allow the investigation to proceed, and the Investigating Officer forms a view during the course of the investigation that the need for suspension may not be a continuing one, he/she will advise the Chairman of the Council as soon as possible. The Chairman will then review the need for the suspension to continue to be in force and will remove it if appropriate.

*Note: It does not automatically follow that if suspension has been effected and is subsequently withdrawn prior to the investigation report being completed, that no disciplinary action will ensue.*

Similarly, if during the course of an investigation, information comes to light that the Investigating Officer believes may be more serious than the original complaint, this matter should be drawn to the attention of the officer commissioning the investigation. In such circumstances that officer will review the need for suspension and whether or not suspending the employee is appropriate in the circumstances.

#### 4.3 Timescales

Timescales for conducting investigations should be as short as possible, but should include realistic time for arranging interviews etc, especially where regional trade union representation is involved. As indicated in Paragraph 4, it will not be possible, nor is it desirable, to wait unreasonable amounts of time for trade union representatives to be available.

The Council will make every effort to ensure that investigations, which it is acknowledged can sometimes be lengthy, particularly where complex issues or a number of witnesses are involved, are completed within a period of 8 weeks.

#### 4.4 Investigation Interviews

Employees who are subject to disciplinary investigations are guaranteed the following:

- A clear statement of the reason(s) for the disciplinary investigation being undertaken;
- A clear timetable will be set at the outset to avoid unnecessary delays and prompt updates if the investigation is extended;

- An opportunity to give their evidence to the investigating officer in a statement format;
- The right to be accompanied throughout the process by a representative or friend. There is a mutual obligation between the Investigating Officer and the employee being investigated to keep each other informed throughout the investigation process.

#### 4.5 Witnesses

Other employees may be called to provide witness statements, which they will have the opportunity to comment on. Witnesses will be expected to attend both investigation interviews and/or a formal disciplinary hearing if required to do so.

Employees who are involved as witnesses or colleagues will also be kept informed about process, and given updates without compromising the privacy of the individuals involved.

#### 4.6 The Investigation Report

At the end of the investigation the Investigating Officer will compile a first draft of the report, which will be sent to the employee being investigated for their comments. Employees are expected to limit their comments to the factual accuracy of the information and will not include commentary on the relative merits of other information, including witness testimony, provided in the report. The employee's comments will be appended to the final report.

The Investigating Officer will send the completed report to the Chairman of the Council. The decision about whether there is a prima facie case to answer and, therefore, whether to proceed to a disciplinary hearing will be made by the Chairman of the Council.

### 5. The Formal Disciplinary Hearing

#### 5.1 Organising the Hearing

The hearing will be organised by either the Town Clerk or a person appointed by the Chairman of the Council who will arrange for:

- Notification of attendance of the employee and any witnesses (on either side) to be provided in advance of the hearing. Witnesses will be provided with a copy of their own statement if they are to attend the hearing;
- Distribution of papers for a hearing to the employee, the employee's representative, the members hearing the case will be at least **five working days** in advance. Additional documents received after this time will only be accepted on the day at the discretion of the Chairman of the Council.
- Rooms for the hearing, a waiting adjournment room for the employee and representative, and a waiting room for witnesses;

#### 5.2 The Hearing Officer

Formal disciplinary hearings will be conducted by the line manager or Chairman of the Council other than where:

- They have direct involvement with a case e.g. as a witness; or
- They are absent or unavailable within a reasonable timescale.

In such cases which are rare, the Chairman of the Council will appoint an alternative.

### 5.3 Recording Proceedings

The Council will ensure a suitable person attends to record the Hearing. The record will be typed within two weeks of the hearing.

### 5.4 Employee Absence and Non attendance at Hearings

Employees who are absent due to sickness will normally only be required to a disciplinary hearing with written confirmation, either from themselves or from a medical advisor, that they are fit to attend. Employees may be required to attend an interview with Occupational Health to assess their fitness for this purpose and, if they refuse to do so, the hearing may progress in absence of medical advice.

If the employee fails to attend a hearing, and attempts have been made to contact them, the Hearing Officer may postpone the hearing or, in cases where there is evidence that nonattendance is deliberate, carry on with the hearing in their absence.

### 5.5 Notification of the Decision

If the Hearing Officer is not able to make a decision within reasonable time at the conclusion of the hearing, the outcome will be notified in writing within 5 working days. This notification will include a summary of the reasons for the decision and information about how to appeal. Where appropriate and practical, the notification letter will also include one opportunity for the manager and employee to review progress before the end of any formal warning that has been issued.

### 5.6 Keeping others informed

It is not appropriate to give other employees the full details of disciplinary action taken, other than where dismissal takes place. However, in whistleblowing or similar cases, and where other staff have been witnesses or otherwise affected by the case, the Chairman of the Council informs them that the process is completed, appeal timetables, and offering access to counselling support if required.

### 5.7 External Communication

Where a case has been subject to media interest, all enquiries, statements etc should be directed through to the Town Clerk or if the issue concerns the Town Clerk through the Chairman of the Council. The standard response will be that the Council does not comment on individual staffing matters.

### 5.8 Action Plan

If during the hearing a case raises additional issues that need to be addressed, the Hearing Officer should make recommendations to the Personnel Committee to devise an action plan. All parties who need to take action will be notified and the required measures should be in place as soon after the hearing as possible.

### 5.9 Relationship to Grievance

Where an employee subject to a disciplinary hearing has also submitted a grievance, the grievance will be considered separately. In most cases the disciplinary hearing will take

place before the grievance is formally considered. However, the Council reserves the right to change the order of hearings depending upon the content of the grievance.

## 6. Disciplinary Sanctions<sup>2</sup>

6.1 The level of disciplinary sanction will depend on the facts of each case. Medical information and circumstances will only be considered on the basis of advice from the Council's Occupational Health advisor.

6.2 Possible formal actions are:

□ ***Formal Verbal warning.***

The employee will be given the reason for the warning, told that it constitutes the first step of the disciplinary procedure and of the right of appeal. The formal verbal warning will be confirmed in writing but will **not** be a written warning. A formal verbal warning will be disregarded for disciplinary purposes after 6 months.

□ ***Written warning.***

The employee will be given the reasons for issuing a written warning. The written notification will include details of the complaint, the improvement or change in behaviour required, the timescale allowed for this and the employee's right of appeal. It will also state that further action may be considered if there is no appropriate improvement or change. A copy of the warning letter will be kept but will normally be disregarded for disciplinary purposes after 9 months

<sup>2</sup> Disciplinary sanctions that result in a written warning of some kind have various time limits attached to them after which they will be disregarded for disciplinary purposes. However, for practical reasons they will not be physically removed from personal files.

□ ***Final written warning.***

The employee will be given reasons for issuing a final written warning. The written notification will include details of the complaint, the improvement or change in behaviour required, the timescale allowed for this and the employee's right of appeal. It will also state that dismissal or some other action short of dismissal may be considered if there is no appropriate improvement or change. A copy of the warning letter will be kept but will normally be disregarded for disciplinary purposes after 12 months.

□ ***Dismissal.***

This dismissal letter will include the reason(s) for dismissal, the date on which the employment contract terminates, and information on how to appeal. Dismissal for gross misconduct will normally be without notice. Recruitment to any consequential vacancy will normally be delayed until after the hearing of any appeal.

□ ***Loss of increment.***

Written notification will always follow this course of action. This sanction is likely to be used rarely and generally in cases where it is considered that an employee's sub-standard performance is wilful rather than due to a lack of capability. This sanction is available to managers in support of disciplinary sanctions at any level. For reasons of consistency, advice should be sought from independent sources.

## 7. Disciplinary Appeals

Employees have the right to appeal against any formal disciplinary sanction. This right does not apply to ex-employees, other than where the employee has been dismissed through disciplinary action. It also does not apply where action has been taken as part of an employee's probationary period.

### 7.1 Appeals against Disciplinary Sanctions

Appeals against disciplinary sanctions must be made in writing to the Chairman of the Council within 10 working days of written notification of the outcome of a disciplinary hearing being received. All Appeals will be heard by the Council's Personnel Committee.

The decision of the Committee will be final. The Council is aware however of its responsibilities in respect of statutory procedures for handling workplace grievances. With this in mind, the Council reserves the right to introduce an additional appeal stage within this policy thereby providing two opportunities for the appropriateness of a disciplinary sanction to be considered. The Council believes that it is in the interest of both the Council and the affected employee to provide such a facility. In the event that there is to be a 2-stage appeals process, the initial appeal will normally be considered by the Personnel Committee. In all cases a final appeal will continue to be a matter for consideration by the Committee.

Appeal hearings will be conducted in the form of a re-hearing of the disciplinary case.

### 7.2 Appeal Timescales

Appeals must be lodged within 10 working days of receipt of the letter confirming what disciplinary action has been taken. Appeal hearings will normally be held within 20 working days of being lodged, other than by mutual agreement.

### 7.3 Grounds for Appeal

An appeal may be lodged for the following reasons only:

- To permit the employee to argue that the Hearing Officer of the original disciplinary hearing reached an unfair decision;
- To appeal against the severity of a sanction but not the fact that a sanction was due;
- To prove an allegation that a dismissal was wrongful, i.e. procedurally unfair.
- When new evidence has come to light since the original disciplinary hearing.

*Note: New evidence that may come to light constitutes evidence that the employee could not reasonably have known about and/or was genuinely unavailable when preparing for the original disciplinary hearing because it has only just come to light.*

*As the appeal hearing is intended to be a re-hearing of the original case, it would be inappropriate for the employee to seek to introduce new evidence at the appeal stage, having elected to exclude it and not rely on it for the original hearing.*

### 7.4 Referral back to the original disciplinary hearing

Where it is appropriate, e.g. in the event that the employee insists on introducing new evidence which is additional to that considered at the original hearing, Personnel Committee, reserves the right to refer the matter back to the original hearing officer for consideration of that evidence. This action, if taken, will not remove the employee's right to appeal.

## **8. Whistleblowing**

8.1 Employees who suspect fraud, corruption or other malpractice at work should report their suspicions as set out in the Council's *Whistleblowing Policy*.

8.2 Complaints will be taken seriously and investigated. Decisions on how to proceed will be depend on a number of factors e.g. quality of evidence, type of complaint, whether the complaint was anonymous etc.

8.3 If it is clear that there may be irregularities, action will be taken in accordance with the disciplinary procedure. If an investigation concludes that the whistleblowing process has been misused and the allegation was unfounded and may have been made maliciously this will be a disciplinary matter in itself. This should not deter anyone with a genuine concern, and will only apply where allegations are considered to have been made maliciously.