

## **DUNDEE CITY COUNCIL**

**REPORT TO: POLICY AND RESOURCES COMMITTEE - 25 JANUARY 2010**

**REPORT ON: AMENDMENTS TO PROCEDURE FOR DEALING WITH BREACHES OF DISCIPLINE AND SUB STANDARD WORK PERFORMANCE AND GRIEVANCE PROCEDURE**

**REPORT BY: HEAD OF PERSONNEL**

**REPORT NO: 57-2010**

### **1 PURPOSE OF REPORT**

- 1.1 To seek approval for amendments to the Procedure for Dealing with Breaches of Discipline and Sub Standard Work Performance and Grievance Procedure.

### **2 RECOMMENDATION**

- 2.1 It is recommended that Committee approves the amended Procedure for Dealing with Breaches of Discipline and Sub Standard Work Performance (attached as Appendix 1) and Grievance Procedure (attached as Appendix 2).

### **3 FINANCIAL IMPLICATIONS**

- 3.1 None.

### **4 MAIN TEXT**

- 4.1 With effect from 6 April 2009 the Employment Act 2009 repealed the existing statutory procedures for dealing with discipline, dismissal and grievance issues, as set out in the Employment Act 2002.

A revised ACAS Code of Practice has also been produced and the Council's procedures have been amended accordingly.

### **5 POLICY IMPLICATIONS**

- 5.1 This report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti Poverty, Equality Impact Assessment and Risk Management. There are no major issues in connection with these.

### **6 CONSULTATIONS**

- 6.1 The Chief Executive, Depute Chief Executive (Support Services), Director of Finance and the trade unions have been consulted.

7      **BACKGROUND PAPERS**

7.1    None.

I Martin  
Head of Personnel

18 January 2010

**DUNDEE CITY COUNCIL****PROCEDURE FOR DEALING WITH BREACHES OF DISCIPLINE AND SUB-STANDARD WORK PERFORMANCE****PURPOSE AND SCOPE**

Disciplinary rules and procedures promote fairness and equity in the treatment of employees and in the conduct of industrial relations. They help to ensure the safety and well-being of all employees and assist the Council to operate effectively. Rules set standards of conduct and performance at work; procedures help to ensure that the standards are adhered to and also provide a fair method of dealing with alleged failures to observe them. This procedure should not be viewed primarily as a means of imposing sanctions. Where possible, it aims to encourage improvement in individual conduct and/or performance.

The procedure applies to all employees with the exception of the Chief Officers, and teachers and associated professionals who are covered by separate but similar procedures.

**RESPONSIBILITY FOR DISCIPLINE**

Employees are responsible for their own conduct, standard of work and behaviour. They have a duty to conform with any rules laid down by the Council and to carry out any reasonable instructions from a manager or supervisor. Heads of Departments are responsible for the management and discipline of their Departments. A manager/supervisor may caution an employee when a minor infringement of the established standards of conduct or performance has been committed. Whilst this will not constitute formal disciplinary action and will not be recorded in any form, further misconduct or failure to achieve required standards of work will lead to formal action. In cases of formal disciplinary action, the Head of Department, or a nominated senior officer, has the right to warn, suspend without pay, withhold incremental progression, and demote or dismiss subject to an employee's right of appeal outlined below. Department managers should obtain Personnel advice on all disciplinary matters.

**FORMAL DISCIPLINARY ACTION**

When a manager/supervisor considers that it may be necessary to take formal action in respect of an employee, a Personnel Adviser will be contacted immediately and before a Disciplinary Hearing is arranged.

- **Investigation**

Before taking any disciplinary action, the manager/supervisor must be satisfied that the circumstances have been fully investigated and that all the facts have been gathered. The manager/supervisor may request Personnel assistance in this task.

- **Suspension**

In exceptional cases, where remaining at work would worsen the situation or would hamper proper investigation, an employee accused of misconduct may be suspended on full pay for a limited period while the alleged offence is being investigated. This type of suspension is a neutral action to provide a cooling off period or to facilitate the investigation and no judgement or censure is implied.

- **Disciplinary Hearing**

If, after investigation, it is considered that a Disciplinary Hearing is necessary, the employee will be advised in writing of the date, time and venue of the Hearing, details of the allegation(s) being made, and of the right to be accompanied. The notification should contain sufficient information about the alleged misconduct or poor performance to enable the employee to prepare to answer the case or a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification. Sufficient notice of the date of the Hearing will be given and every effort will be made to hold the Hearing at the earliest possible opportunity. At the hearing, the employee concerned will be required to answer the allegations and give an explanation of events. The main purpose of the Hearing is to allow the individual the opportunity to state his/her case before any decision is made. A Personnel Adviser may attend any formal hearing.

Where an employee is persistently unable or unwilling to attend a disciplinary hearing without good cause the hearing will go ahead in the employee's absence and a decision made on the evidence available in such circumstances. A written submission may be presented to the chair of the hearing for consideration or presented by a trade union representative or colleague.

- **Right to be Accompanied**

At a Disciplinary Hearing, or at a formal investigatory meeting following suspension, or where a statement is to be taken and responses recorded for possible reference at any subsequent disciplinary or appeal hearing, an employee has the right to be accompanied by a trade union representative, an official employed by a trade union or a fellow employee. An employee is not entitled to representation by any other party. Failure to recognise an employee's right of accompaniment may affect the admissibility of evidence obtained. It is the employee's responsibility to arrange the attendance of any such person.

If the trade union representative, official employed by a trade union or fellow employee cannot attend on a proposed date for a disciplinary hearing, the employee can suggest an alternative time and date so long as it is reasonable.

- **Witness/Documentary Evidence**

At the Disciplinary Hearing, both parties have the right to call witnesses and to produce documentary evidence. In cases where documentation is extensive and/or complex, the parties may agree to exchange relevant papers to save time and aid understanding. In any event, sufficient time to read and digest written information will be allowed. If requested, Departmental management will provide reasonable assistance, where possible, in accessing witnesses or relevant documents.

- **Penalties for misconduct/poor performance substantiated following a Disciplinary Hearing**

In the case of minor misconduct or performance problems, a manager/supervisor may choose to give an ORAL WARNING. However, as this is the first level of formal action, it will be confirmed in writing, stating the nature of the offence, the reason for the decision, the likely consequences of further misconduct or sub standard work and the right of appeal. Written confirmation of the warning will normally be received within 7 days of the Disciplinary Hearing. In normal circumstances, subject to satisfactory conduct/performance, such a warning will be disregarded for disciplinary purposes after a period of 6 months and the confirmation will contain a statement to that effect.

If the issue is sufficiently serious, a WRITTEN WARNING may be given setting out the nature of the offence, the reason for the decision, the likely consequences of further misconduct or sub standard performance, and the right of appeal. Written confirmation of the warning will normally be received within 7 days of the Disciplinary Hearing. In normal circumstances, subject to satisfactory conduct/performance, such a warning will be disregarded for disciplinary purposes after a period of 12 months and the warning will contain a statement to that effect.

More serious, or further misconduct or unacceptable performance, may warrant a FINAL WRITTEN WARNING. Such a warning will set out the nature of the offence, the reason for the decision, a statement that any further misconduct or sub standard work will lead to dismissal, and the right of appeal. Written confirmation of the warning will normally be received within 7 days of the Disciplinary Hearing. In normal circumstances, subject to satisfactory conduct/performance, such a warning will be disregarded for disciplinary purposes after a period of 15 months and the warning will contain a statement to that effect.

It is also possible to supplement the above warnings by applying other disciplinary sanctions including withholding incremental progression, demotion or suspension without pay. Warnings for poor performance will provide an opportunity to improve and reach the required standard of work, with suitable support, where appropriate.

Repeated misconduct or sub standard work may result in DISMISSAL and this will be confirmed by a letter setting out the nature of the offence, the reason for the decision to dismiss, and the right of appeal. Written confirmation of dismissal will normally be received within 14 days of the Disciplinary Hearing.

Depending on the nature and seriousness of the offence, it is not necessary to progress from one level to the next in the scale of penalties. For example, it is possible for a Final Written Warning to be issued without a Written Warning having previously been issued. Furthermore, certain very serious offences will be regarded as gross misconduct or negligence and will normally warrant dismissal without notice (or pay in lieu of notice) even in the absence of previous warnings. This is termed SUMMARY DISMISSAL. Summary dismissal for gross misconduct or negligence will however only take place after an investigation to establish all of the facts, a Disciplinary Hearing being held to hear any explanations and consideration being taken of the employee's previous record and length of service. An employee will not be dismissed for a first offence unless gross misconduct or negligence has been established.

For information, and in accordance with ACAS advice, the following list, which is not exhaustive, provides examples of offences which are normally regarded as gross misconduct: theft or fraud; physical violence or bullying; deliberate and serious damage to property; serious misuse of an organisation's property or name; deliberately accessing internet sites containing pornographic, offensive or obscene material; serious insubordination; unlawful discrimination or harassment; bringing the organisation into serious disrepute; serious incapability at work brought on by alcohol or illegal drugs; causing loss, damage or injury through serious negligence; a serious breach of health and safety rules; and a serious breach of confidence.

## **PARTICULAR CASES**

- **Time Limits for Warnings**

As stated, in normal circumstances, subject to satisfactory conduct/performance, warnings will be disregarded for future disciplinary purposes after the specified times. There may however, be occasions where an employee's conduct/performance is acceptable throughout the period a warning is in force but deteriorates very soon thereafter. If a pattern emerges or there is evidence of abuse, the employee's total disciplinary record will be borne in mind in deciding how long any current warning should last and the level of action to be taken in respect of subsequent offences. This will be specified in the written confirmation of the warning.

Exceptionally, there may be circumstances where the misconduct is so serious - verging on gross misconduct - that it cannot realistically be disregarded for future disciplinary purposes. In such circumstances it will be made clear that the final written warning may never be disregarded.

- **Criminal Charges or Offences**

In the event of an employee being charged with or found guilty of a criminal offence, the case will be thoroughly investigated, considered on its merits, and if appropriate dealt with in accordance with this procedure.

- **Disciplinary Action against Employees who are Trade Union Officials**

Normal disciplinary standards are expected of an employee who is a trade union official. However, no formal disciplinary action will be taken against such an employee until the circumstances of the case have been discussed with a full time official of the employee's trade union.

## **RIGHT OF APPEAL**

An appeal may be lodged against formal disciplinary action, and employees have the right to be accompanied by a trade union representative or fellow employee at any appeal hearing. Employees should detail the grounds of their appeal in writing..

When implementing disciplinary action, the manager/supervisor will advise the employee of the right of appeal. This right, if required, must be exercised in writing to the Head of Department within 14 days of receiving written confirmation of the disciplinary action.

Appeals will be heard by the Head of Department or a senior officer nominated by that officer within 14 days of receipt of the appeal. In the case of appeals against dismissal or punitive action such as demotion, if the Head of Department or nominated senior officer does not uphold the appeal, there will be a final right of appeal to the Personnel Appeals Sub Committee of elected members which will be conducted in accordance with the relevant National Agreement. Employees wishing to exercise this right must do so in writing to the Chief Executive within 14 days of receiving written confirmation of the decision of their Head of Department or nominated senior officer not to uphold the first appeal. Such cases will normally be heard by the Personnel Appeals Sub Committee within 3 months of the appeal being lodged and ideally within a month.

The decision reached at an Appeal Hearing, by the Personnel Appeals Sub Committee in the case of a dismissal or by a Head of Department or nominated senior officer in respect of any other disciplinary action, is final and will be confirmed in writing. In the event of any disciplinary action being reconsidered and withdrawn, any written reference to the action and to the disciplinary proceedings will be deleted and the employee will be advised in writing accordingly.

Any right to make a claim to an employment tribunal is unaffected by this procedure.

**DUNDEE CITY COUNCIL****GRIEVANCE PROCEDURE****PURPOSE AND SCOPE**

A grievance procedure is necessary to enable employees, individually or collectively, to seek redress for complaints relating to their employment where normal employee/management communication has failed to resolve matters. The procedure, once invoked, encourages a fair resolution of complaints at as early a stage in the procedure as possible.

**PROCEDURE****Stage 1 - If you wish to complain**

- First discuss the matter with your immediate supervisor.
- Your supervisor will respond orally to your complaint within 2 working days of the complaint being raised.
- If you continue to be aggrieved you may raise the matter with your supervisor again with the assistance of your trade union representative. You will again be advised of the outcome within 2 working days.

**Stage 2 - If you are still aggrieved**

- Write to your Head of Department within 14 days of the above response stating clearly and fully the basis of your complaint and the resolution you seek.
- Your Head of Department will arrange a meeting or meetings with yourself and other interested parties to consider your complaint. The initial meeting will be held within 14 days of receipt of your written complaint. A Personnel Adviser will attend this meeting. You have the right to be accompanied by your trade union representative or another Dundee City Council employee at this meeting. However it is your responsibility to ensure that the trade union representative attends.
- You will be advised in writing of the conclusions reached and the right of appeal within 14 days of the final meeting.
- Where it is considered useful another meeting may be held subject to the same conditions.

**Stage 3 - Right of Appeal**

- If you are still dissatisfied, write to the Chief Executive within 14 days of the above response.



- The Chief Executive will appoint a Senior Officer of a department, other than the department in which you are employed, to hear your appeal.
- The Senior Officer will arrange a meeting or meetings with yourself to hear your appeal and meetings with other interested parties are required. The initial meeting will be held within 4 weeks of receipt of your letter of appeal. A Personnel Adviser will attend this meeting. You have the right to be accompanied by your trade union representative or another Dundee City Council employee at this meeting. However it is your responsibility to ensure that the trade union representative attends.
- You will be advised in writing of the conclusions reached.
- There is no further right of appeal.

## **PROCEDURE WHICH APPLIES WHERE AN EMPLOYEE HAS ALREADY LEFT EMPLOYMENT**

Wherever possible a grievance should be dealt with before an employee leaves employment. Where an employee has already left employment, his/her grievance must be lodged within 3 months of leaving employment in line with the steps below:-

### Step 1

Write to your former line manager, or that person's line manager if the complaint is against that person, detailing the nature of the alleged grievance and the resolution you seek.

### Step 2

Your former line manager, or nominated officer, will arrange a meeting to consider the grievance. A Personnel Adviser will attend this meeting.

You have the right to be accompanied by your trade union rep or another Dundee City Council employee at this meeting. However it is your responsibility to ensure that the trade union rep attends. You will be advised in writing of the conclusions reached and the right of appeal within 14 days of the final meeting.

### Step 3

If you are still dissatisfied, write to the Head of the Department in which you were employed within 14 days of the above response advising that you wish to pursue an appeal.

The Head of Department will arrange a meeting to consider your appeal. A Personnel Adviser may attend this meeting. You have the right to be accompanied by your trade union rep or another Dundee City Council employee at this meeting. However, it is your responsibility to ensure that the trade union rep attends. You will be advised in writing of the conclusions reached within 14 days of the final meeting.

## **NOTES**

You are entitled to pursue your complaint with or without representation by a trade union or another employee. You are not entitled to representation by any other party.

A collective grievance or complaint may be submitted and pursued by a group of employees or by a trade union on their behalf.

The Head of Department may be represented during the procedure by another nominated senior officer.

There may be some kind of complaints, which you cannot discuss with your line manager, for example, personal harassment. As part of the Council's Personal Harassment Policy, there are nominated support officers whom you can contact for confidential advice. Alternatively confidential advice can be obtained from a Personnel Adviser.