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Chief Officers Disciplinary Policy and Procedure

(Excluding Protected Officers)

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1. AIMS

- 1.1 The objective of this procedure is to encourage Chief Officers to achieve and maintain appropriate and high standards of behaviour in line with the Staff Code of Conduct and to provide a fair and consistent method of dealing with allegations of misconduct.

2. SCOPE

- 2.1 The procedure applies to Chief Officers employed under Joint Negotiating Committee for Chief Officers of Local Authorities Conditions of Service.
- 2.2 It does not apply to the Chief Executive, the Monitoring Officer or Section 151 Officer who will be subject to a separate disciplinary procedure.

3. GENERAL GUIDELINES AND PRINCIPLES

- 3.1 In general, informal conciliation is to be preferred if it can bring about a mutually agreed solution to the problems that have arisen.
- 3.2 Any officer within the scope of this policy has the right to be accompanied by a trade union representative or work colleague at any stage of the procedure. They and/or their representative have the right to put their side of the case and to call witnesses.
- 3.3 The procedure:
- a. specifies who has the authority to take disciplinary actions
 - b. ensures that action is not taken without careful investigation
 - c. provides a right of appeal
 - d. gives clear details of time scales and any deadlines associated with the various stages of the procedure.
- 3.4 The Human Resources Manager should be informed of all disciplinary concerns in order to provide advice on the employment and legal implications and attend and be involved in any part of the process as appropriate.
- 3.5 If the officer concerned is a trade union steward or representative, the Council will inform the regional office of the trade union concerned prior to commencement under this procedure.
- 3.6 At all stages in the procedure confidentiality must be respected by all the parties involved.
- 3.7 No officer will be dismissed for their first breach of discipline, unless it is a case of gross misconduct.

- 3.8 The application of this policy and procedure will be non-discriminatory irrespective of an employee's age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, gender or sexual orientation.

4. PROCEDURE

- 4.1 **Pre-Hearing Action/Preliminary Investigation**
- 4.1.1 If the problem cannot be resolved by informal conciliation, a preliminary investigation will take place to determine if a question of discipline exists.
- 4.1.2 The Chief Executive may determine whether or not to suspend the officer (See Section 4.2).
- 4.1.3 Any investigation regarding alleged misconduct by a Chief Officer will be undertaken by an investigating officer appointed by the Chief Executive.
- 4.1.4 The Investigating Officer will notify the officer concerned of the allegations which are being investigated and that they will be given the opportunity to make representations on their behalf.
- 4.1.5 The Investigating Officer may inspect any documents relating to the conduct of the officer which are in the possession of the council or which the council has power to authorise them to inspect.
- 4.1.6 The Investigating Officer may require any employee to attend an interview as part of the investigation to answer questions concerning the conduct of the officer concerned
- 4.1.7 The Investigating Officer will interview the officer concerned giving at least 5 working days' notice in writing of the requirement for them to attend any investigative meeting. The letter should also give them an appropriate amount of information about the allegations and their right to be accompanied by a trade union representative or work colleague at the interview.
- 4.1.8 The Investigating Officer will produce a report for the Chief Executive. This report will:
- a. state whether (and if so the extent to which) the evidence they have obtained supports any allegation of misconduct against the officer; and
 - b. recommend whether it is appropriate for disciplinary action to be taken against the officer.

4.1.9 Where disciplinary action is recommended human resources will arrange a disciplinary hearing with the Chief Executive as the Hearing Officer.

4.2 **Suspension**

4.2.1 Where there is enough evidence to suggest that the officer may be guilty of gross misconduct or where the officer's continuing presence at work compromises the investigation or impairs the efficient exercise of the council's functions, the officer will be suspended from duty.

4.2.2 Gross misconduct is generally defined as misconduct serious enough to destroy the employment contract between the employer and the employee and to make any further working relationship and trust impossible. (See section 8)

4.2.3 A Chief Officer can only be suspended on the authority of the Chief Executive. An officer will be informed in writing at the earliest opportunity stating the reasons for the suspension, who they may contact within the council while they are suspended and that suspension will be on full pay and should last no longer than 60 days (unless there are exceptional circumstances).

4.2.4 It will be made clear to the officer that suspension is not a disciplinary penalty and that it will not prejudice any future disciplinary hearing.

4.2.5 The Investigating Officer may recommend

- a. that the Council terminates any suspension of the officer;
- b. that any such suspension must continue after the expiry of 60 days.

4.2.6 **Pay during Period of Suspension**

Chief Officers will normally continue to receive full pay during a period of suspension. However, if certified as unfit to attend for work, owing to ill-health payments will be made in accordance with normal sick pay provisions as set out in their Statement of Particulars.

4.3 **Cases Involving Child Protection, Vulnerable Adults, Financial Irregularities, or Wider Issues for the Council**

4.3.1 Any complaint involving allegations relating to child protection issues or vulnerable adults must be discussed with the designated Local Authority Designated Officer (LADO) at Lancashire County Council.

- 4.3.2 In accordance with the Financial Regulations and Financial Procedure Rules the Head of Governance & Business Support must be notified of any suspected fraud, theft, irregularity, improper use or misappropriation of the authority's property or resources. The Head of Governance & Business Support will undertake all such investigations as are considered necessary, including notifying and liaising with the police where criminal offences are suspected. The results of the investigations will form part of any action taken under this Disciplinary Procedure.

5. DISCIPLINARY HEARING

- 5.1 If the Chief Executive accepts a recommendation to proceed to a full disciplinary hearing this will be convened in accordance with the arrangements described below.
- 5.2 The officer must receive formal notice of a disciplinary hearing. The letter must give at least 5 working days' notice of the hearing and will include:
- a. confirmation that the Chief Executive will act as the Hearing Officer
 - b. the date, time and location of the hearing;
 - c. the investigation report, which will include details of the allegations;
 - d. any other supporting evidence and any witnesses that will be called;
 - e. that the officer will have the opportunity to state their case and call and/or question any witnesses;
 - f. that the employee will have the right to invite a trade union representative or work colleague to represent them;
 - g. any previous warnings that could be taken into account when deciding the level of any disciplinary action;
 - h. That, depending on its findings, the hearing could result in disciplinary action and (adding where appropriate) that this could include dismissal.
 - i. The right to submit a written statement to the Hearing Officer.
 - j. A request that any documents which the officer wishes to be considered and details of any witnesses s/he intends to call are provided to Human Resources at least 3 working days before the hearing.
- 5.3 A member of the Human Resources team or an appropriate independent employment specialist will attend with the Hearing Officer.
- 5.4 A model conduct of the disciplinary hearing is shown in section 9.

- 5.5 The Hearing Officer will be required to reach a decision and –
- a. may exonerate the officer; or
 - b. state their opinion as to whether (and if so the extent to which) the evidence they have obtained supports any allegation of misconduct against the officer;
 - c. determine the disciplinary sanction if any (see Section 6)

6. SANCTIONS

- 6.1 If, following an investigation and disciplinary hearing, disciplinary action is deemed necessary, the following options are available:

6.2 Written Warning

A written warning may be given where:

- a. Informal attempts to resolve the matter have failed, or
- b. the matter is considered to be too serious to be resolved by informal processes.

6.3 Final Written Warning

A final written warning may be given where:

- a. The officer's conduct has not improved as a result of previous written warning(s), that warning is still in force and he/she has committed a further offence requiring disciplinary action.
- b. No previous warning is in force but the officer has committed an offence, which is serious but does not warrant dismissal.

6.4 Time limits for warnings

Unless there are exceptional circumstances, disciplinary warnings will be disregarded for disciplinary purposes once the following periods of time have elapsed since the warning was given:

- a. written warnings – 12 months
- b. final written warnings – normally 24 months

- 6.5 Depending upon the nature of the misconduct, a final written warning may remain in force for a period of greater than 24 months. In this event the officer must be told at the outset and in writing how long the warning will remain in force and the reason for the longer time period. In exceptional circumstances (for example abuse against children and vulnerable adults), the written warning may be extended for as long as the officer concerned is employed in their current job or a similar job. If an officer considers that the extended time period is unreasonable, they may appeal to the Employment and Appeals Committee.

6.6

Dismissal

If, following an investigation and disciplinary hearing, the Hearing Officer is satisfied that the officer is guilty of gross misconduct, the officer will be dismissed without notice or pay in lieu of notice. OR

If, while a final written warning is still in force, the officer's conduct is still unsatisfactory, as determined by a subsequent investigation and disciplinary hearing, the Hearing Officer will normally dismiss the officer with notice or pay in lieu of notice.

6.7

Written confirmation of sanctions

The officer will receive written confirmation of the Hearing Officer's decision, together with:

- a. full details of the sanction
- b. the reason for the sanction;
- c. whether it is a written warning, final warning or dismissal;
- d. their right of appeal (see section 7);
- e. that a note will be kept on their personal file indicating that a warning has been given, the reasons for it and any required improvements in conduct which have been specified;
- f. that further misconduct may lead to further disciplinary action which could include dismissal;
- g. that the warning will be disregarded for further disciplinary purposes after the expiry of the time period.

7. APPEALS

7.1

An officer who wants to appeal against a dismissal or any other level of formal disciplinary sanction should inform the Head of Governance & Business Support within ten working days of being told the decision in writing. The officer must explain the grounds for the appeal, specifying whether it relates to the facts of the matter, the level of sanction imposed or the way the procedure was followed.

7.2

All appeals will be considered by a panel of three members of the Employment and Appeals Committee.

7.3

The purpose of an appeal is:

- a. to review the decision taken;
- b. to consider whether the procedure has been followed correctly.

- 7.4 An appeal is not a re-hearing of the disciplinary hearing, but a review of the decision. The outcomes open to the appeal committee are to:
- a. uphold the appeal;
 - b. reject the appeal in full;
 - c. reject the appeal in part and impose a lower level of warning;
 - d. in exceptional circumstances, reject the appeal and impose a higher level of warning up to and including a final written warning.

8. HANDLING GROSS MISCONDUCT

- 8.1 Some of the offences which may be regarded as gross misconduct are (this list is not exhaustive).
- a. Theft or incitement to steal, unauthorised use or removal of the council's, a service user's, a client's or a fellow employee's property, fraud or fraudulent falsification of accounts or other official records.
 - b. Falsification of time-sheets, expenses claims or other records, providing false and misleading information.
 - c. Fighting or physical assault.
 - d. Harassment or discrimination on the grounds of race, gender, sexuality, disability, age or religious belief, or other grossly offensive behaviour.
 - e. Deliberate damage to council or a fellow employee's property.
 - f. Accepting gifts or bribes for personal gain.
 - g. Inability to carry out normal work through being under the influence of alcohol or other drugs (medically prescribed drugs may be an exception).
 - h. Negligent or wilful failure to comply with legal requirements and council policies and procedures.
 - i. Serious negligence causing unacceptable loss, damage or injury.
 - j. A serious breach of the Code of Conduct.
 - k. Misuse of an employee's official position for personal gain, or for the inappropriate benefit of a friend, colleague or member of the employee's family.
 - l. Serious neglect of duty and responsibility associated with the post.
 - m. Abuse of a service user.
 - n. Non-disclosure of criminal convictions, cautions, and bans e.g. from driving that have occurred during the employees employment with the council.
 - o. Bringing the council into serious disrepute.
 - p. Criminal offences, which relate to, or affect the employee's ability to fulfil the terms of their contract, or have the potential to damage the reputation of the council.
 - q. Serious breach of the council's ICT or Data protection policy.

9. ORDER OF CONDUCT OF DISCIPLINARY HEARING

- 9.1 The Hearing Officer will begin the formal hearing by
- a. introducing the people present
 - b. explaining the purpose of the meeting
 - c. checking any arrangements for representation
 - d. outlining the format to be followed
- 9.2 The Investigating Officer presents the case from their investigation, referring to any documents and witnesses.
- If they call a witness -
- a. they will question the witness
 - b. the employee or their representative may question the witness
 - c. the Hearing Officer and his advisor may ask questions of the witness
- 9.3 The Officer or their representative can then question the Investigating Officer.
- 9.4 The Hearing Officer and his advisor may question the Investigating Officer.
- 9.5 The Officer or their representative presents the officer's response - which will include any mitigation, referring to documents and witnesses where appropriate.
- If the officer or their representative calls a witness -
- a. They will question the witness
 - b. The Investigating Officer may question the witness
 - c. The Hearing Officer and their advisor may ask questions of the witness
- 9.6 The Investigating Officer questions the officer or their representative on their response to case.
- 9.7 The Hearing Officer and their advisor may question the officer or their representative.
- 9.8 Summing up by each side. The Investigating Officer sums up case first. The Officer/representative sums up last. New evidence should not be introduced during summing up, however the Hearing Officer reserves the right to seek further information where it appears that there may be new evidence that could affect the outcome of his decision.
- 9.9 The Hearing Officer and their advisor adjourn to consider and decide on whether the allegations are substantiated and (taking into account any current warning) on any consequent action.
- 9.10 The employee is recalled and informed of the decision, the rationale for making that decision, the right of appeal and that written confirmation will follow.

10. EQUALITY IMPACT ASSESSMENT AND MONITORING

- 10.1 The operation of this policy will be monitored for its impact on different staff groups in line with the Equality Act 2010. This will enable the Council to assess whether any differences have an adverse impact on a particular group, such that further action would be required

11. DATA PROTECTION

- 11.1 In implementing this policy, the Council will ensure that any personal data relating to the application of this policy will be obtained, processed and destroyed in line with Data Protection requirements.
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