



LEDBURY TOWN COUNCIL

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26 March 2025

TO: Councillors Chowns (chair), Harvey, Hughes and Morris

Dear Member

Please find attached the "To Follow" reports in respect of the **Resources Committee** which will be held in the **Council Offices, Church Lane, Ledbury**, on **Thursday, 27 March 2025 at 6:30pm**.

Yours faithfully

Angela Price

Town Clerk

FILMING AND RECORDING OF COUNCIL MEETINGS

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A G E N D A

5. **To review the following Policies and Procedures (Pages 453 - 485)**
- **Grievance Policy**
 - **Disciplinary Procedure**

Distribution: Full agenda to: - Committee members (5)

Agenda front pages to all non-committee members (6)

Report prepared by Angela Price – Town Clerk

TO REVIEW THE FOLLOWING POLICIES AND PROCEDURES

Purpose of Report

The purpose of this report is to provide Members of the Resources Committee with a proposed new draft Grievance Policy and Disciplinary Procedure for consideration.

Equality Duty

Under section 149 of the Equality Act 2010, the “general duty” on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to:

- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c. foster good relations between persons who share a relevant protected characteristic and person who do not share it.

The public sector equality duty (specific duty) requires Ledbury Town Council to consider how it can positively contribute to the advancement of equality and good relations and demonstrate that they are paying ‘due regard’ in their decision making in the design of policies and in the delivery of services.

Detailed Information

Attached are two new proposed draft policies for consideration to replace the current Grievance & Disciplinary policies and procedures.

Members will be aware that recent events have highlighted that the Council’s current procedures do not provide clear guidance and clarification on the processes to deal with grievances and disciplinary matters. Therefore, attached are two new proposed draft policies based on the National Association of Local Councils recommended policies. It is important to ensure that all policies are reviewed periodically and following any use of the policies whereby it has been established that the current policies are not considered fit for purpose. Through recent events both policies have been identified as having areas within them that need improvement to ensure a fair process for all staff going forward.

Also attached are copies of the Council's current policies and procedures in relation to Grievance and Disciplinary for comparison.

Members have also been provided with an amended Capability Policy. The amendments to this policy are as a result of the Clerk asking Hoople to review the policy on the Council's behalf and includes suggestions from Hoople for consideration.

Recommendation

1. That Members of the Resources Committee give consideration to the attached proposed new draft Grievance and Disciplinary policies and procedures in respect of Grievance and Disciplinary and subject to any amendments recommended them to Council for approval.
2. That Members of the Resources Committee give consideration to the suggestions provided by Hoople in respect of the Capability Procedure and subject to any further amendments recommend this policy to Council for approval.
3. That the draft policies and procedures agreed at this meeting be provided to the Unions and Hoople for comments prior to final sign off.



LEDBURY TOWN COUNCIL

GRIEVANCE POLICY AND PROCEDURE

Date Created: 29/06/2023

Next Review: 29/06/2025

LEDBURY TOWN COUNCIL
GRIEVANCE POLICY & PROCEDURE

Equality

In putting this procedure into practice, no aspect of this procedure will discriminate on the grounds of race, sex, sexual orientation, gender reassignment, age, religion, politics, marital status, disability and/or union membership or any other grounds likely to place anyone at a disadvantage, in accordance with the Equality Act 2010.

1. INTRODUCTION

- 1.1 The purpose of this policy is to specify the formal procedure by which employees can raise a grievance, while encouraging employees to use informal discussions to resolve problems in the first instance.
- 1.2 This policy applies to all employees of Ledbury Town Council. This policy does not apply to grievances raised on behalf of two or more employees by a representative of a recognised trade union or other appropriate workplace representative. Such grievances will be dealt with using the council's collective grievance process.
- 1.3 This policy does not apply where an employee has a grievance about a councillor. If it is not possible to resolve a complaint of this nature informally, it must be passed on to the Monitoring Officer at Hereford Council.
- 1.4 This policy does not apply when the council has no control over the matter, although the council will give information and advice where possible, to help an employee resolve the issue.
- 1.5 This policy does not apply where the procedure has been invoked within six months of the completion of any action under the grievance procedure of the same or similar issue, unless the original action agreed to redress the grievance has not been implemented.

2. DEFINITION OF GRIEVANCE

- 2.1 For the purpose of this policy, grievances are defined as concerns, problems or complaints over work-related matters that an employee raises with the council, and have not been resolved informally within a reasonable time.

Examples of grievances include:

- concerns over employment terms and conditions
- contractual or statutory rights
- health and safety

- work relations
- the working environment
- new working practices
- bullying and harassment
- organisational change
- discrimination

For instances of bullying and harassment, employees are also advised to refer to the council's Anti Bullying and Harassment Policy.

3. INFORMAL PROCEDURE

Ledbury Town Council recommends that all employees talk to their manager informally to try to resolve a problem before raising a formal grievance. However, if the informal approach fails to resolve the matter, employees can use the procedure outlined in this document to raise a grievance formally. The grievance should be raised without unreasonable delay and within fourteen days from the date that the attempt was made to resolve the matter informally.

4. PRINCIPLES OF THE GRIEVANCE PROCEDURE

- i. All grievance claims will be treated fairly and objectively.
- ii. Employees will not be dismissed or suffer disadvantage because of raising a genuine grievance.
- iii. If the employee has difficulty reading and writing, or if English is not their first language, any written documentation, e.g. a letter explaining the outcome of a meeting, will also be explained to them orally in their first language. Additional support that may be required at meetings will also be taken into consideration and provided as appropriate.
- iv. Any action taken because of a grievance will be monitored and reviewed, as appropriate, to ensure that issues are dealt with effectively.

5. FORMAL GRIEVANCE PROCEDURE

Stage 1. Write a Letter

- 5.1 The grievance needs to be raised with your line manager/Member (Chair of the Resources Committee) who is not the subject of the grievance, by writing a letter detailing the nature of the grievance.
- 5.2 If the employee has difficulty writing the letter, e.g. if English is not their first language, they are advised to seek help from a trade union representative or colleagues.
- 5.3 The letter must be dated, and the employee should keep a copy for themselves.

Stage 2 Investigation (Optional)

- 5.4 Upon receipt of a grievance it may be necessary to conduct an investigation. If appropriate, an investigatory meeting will be held to gather all relevant facts and evidence.
- 5.5 The employee will be invited to this investigatory meeting as soon as possible, in writing. The model letter in appendix 1 will be used. It will be made clear that the purpose of the meeting is to establish the facts and that the employee may be accompanied by one colleague or trade union representative. Due consideration will be given to whether any reasonable adjustments are necessary for a person who is disabled; this includes colleagues or trade union representatives accompanying the person with a grievance.
- 5.6 The investigatory meeting will usually be conducted by the employee's Line Manager. However, if the Line Manager is the subject of the grievance, the meeting will be conducted by the Town Clerk or Chair of Resources Committee
- 5.7 The investigation will be conducted as soon as possible and will normally be completed within five working days of receiving the grievance. However, if the matter is particularly complex, this can be extended to 15 working days. If it is not possible to complete the investigation within this timeframe, the employee will receive a written explanation of the delay and when the investigation is expected to be completed.
- 5.8 As soon as reasonably practicable after the conclusion of the investigation (usually five working days), the employee will be notified in writing that the investigation has been completed.

Stage 3. Grievance Meeting

- 5.9 A meeting of the Grievance Panel will be held to discuss the grievance with the employee. Wherever possible, the meeting will be arranged within five working days after the grievance is received or within five working days of the conclusion of an investigatory meeting if one has been held. The employee will be notified in writing of the date, time and location of the meeting by the Town Clerk or if the grievance is against the Town Clerk by the Chair of the Grievance Panel, who will conduct the Grievance Meeting and the statutory right of employees to be accompanied at Grievance Meetings. Due consideration will be given to whether any reasonable adjustments are necessary for any person who is disabled; this includes colleagues or trade union representatives accompanying the person with a grievance.
- 5.10 The employee can take one colleague or trade union representative into the meeting. If the employee wishes to be accompanied in this way, they should notify the employer in advance. The employee has the right to call relevant witnesses to the meeting but should notify the employer of their intention to do so in advance of the meeting.

- 5.11 The meeting will be held at a reasonable time and place that suits both parties. The employee, their companion and the employer must make every effort to attend the meeting once a date and time has been agreed. The meeting will be held in private, where there will not be interruptions.
- 5.12 The purpose of the meeting is to establish the facts of the grievance and find a way to resolve the problem. The employee will be given the opportunity to explain their grievance and how they think it should be resolved.
- 5.13 Copies of meeting records will be given to the employee, including any formal minutes. However, Ledbury Town Council may withhold some information in certain circumstances, e.g. to protect a witness.
- 5.14 If deemed necessary, the employer may adjourn the meeting until after further investigation has been conducted. The meeting will be rescheduled as soon as is reasonably practical.

Stage 4. Decision and Notification

- 5.15 The employer will decide what action, if any, to take after the meeting. A letter will be sent to the employee, notifying them of the decision within five working days of the initial meeting. Where appropriate, the letter will set out what action the employer intends to take to resolve the grievance. Where an employee's grievance is not upheld, the reasons for this will be clearly explained. The letter will also specify that the employee can appeal if they are not content with the decision/action taken.

6.0 APPEALS PROCEDURE

- 6.1 If the employee feels that their grievance has not been satisfactorily resolved, they can appeal in writing to the employer, specifying the grounds for their appeal, within five working days of receiving notification of the decision.
- 6.2 An Appeal Hearing will be held, wherever possible, within five working days of receiving notification of the appeal from the employee. The Appeals Panel will consist of three people, two Councillors who were not on the Grievance Panel and one independent person. The employee will be notified in writing of the date and location of the hearing in advance. They will also be informed that they have the right to be accompanied at the hearing. Due consideration will be given to whether any reasonable adjustments are necessary for a person who is disabled; this includes colleagues or trade union representatives accompanying the person with a grievance.
- 6.3 At the hearing, an Appeals Panel will consider any representations made by the employee and/or their companion and those of the investigating Manager/Member and the Manager/Member who conducted the grievance meeting and made the decision. The Appeals Panel will not

include Members or officers who have previously been involved in the case. The appeal will be dealt with impartially.

- 6.4 Copies of meeting records will be given to the employee, including any formal minutes. However, Ledbury Town Council may withhold some information in certain circumstances, e.g. to protect a witness.
- 6.5 The outcome of the appeal will be communicated to the employee in writing within five working days of the hearing. The letter will also specify that there will be no further right of appeal.

7.0 POST-EMPLOYMENT GRIEVANCES

- 7.1 Wherever possible a grievance should be dealt with before an employee leaves their employment with the council. Where an employee has already left employment and the procedure has not been completed, the employee is encouraged to attend any meetings in accordance with this procedure so a final decision can be made. If an employee refuses to attend any meetings, the council will proceed with the meeting in their absence and make a decision based on all the information and evidence available

8.0 DOCUMENTATION

- 8.1 During the grievance process, written records will be kept. These will include: the nature of the grievance, what was decided, and actions taken, the reasons for action taken, whether an appeal was lodged, the outcome of the appeal and any subsequent developments. These will be kept in a secure place.
- 8.2 Records will be treated as confidential and kept no longer than necessary in accordance with current UK Data Protection law.

9.0 OVERLAPPING GRIEVANCE AND DISCIPLINARY CASES

- 9.1 If an employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance. However, where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

Appendix 1
Stage 2 Letter template

Dear [EMPLOYEE]

Grievance meeting

Further to your letter dated [DATE] I would like to invite you to a meeting to discuss the concerns you have raised in relation to your employment.

To summarise, in the above-mentioned letter, you raised the following:

[SET OUT DETAILS OF THE GRIEVANCE]

In order to discuss these concerns, I would like you to attend a meeting at [PLACE] on [DATE] at [TIME]. The meeting will be held in accordance with our grievance procedure, which I attach for your attention.

The meeting will be conducted by me and the following people will also be in attendance [PROVIDE DETAILS]. The meeting will help me establish the full details of your concerns before I undertake a thorough investigation.

You are entitled to bring a fellow employee or a trade union representative to the meeting in accordance with our procedures. I would be grateful if you could confirm the details of your companion to me prior to the meeting.

Please confirm receipt of this letter and that you are able to attend the meeting at the time stated above. If you or your companion are unable to attend for any reason, please let me know as soon as possible.

If you have any questions in the meantime, please don't hesitate to contact me.

Yours sincerely,

LEDBURY TOWN COUNCIL

GRIEVANCE POLICY

Introduction

1. This policy is based on and complies with the 2015 ACAS Code of Practice (<http://www.acas.org.uk/index.aspx?articleid=2174>).
2. It also takes account of the ACAS guide on discipline and grievances at work. (https://www.acas.org.uk/media/1043/Discipline-and-grievances-at-work-The-Acas-guide/pdf/DG_Guide_Feb_2019.pdf).
3. It also takes into account relevant law affecting Councils.
4. It aims to encourage and maintain good relationships between the Council and its employees by treating grievances seriously and resolving them as quickly as possible. It sets out the arrangements for employees to raise their concerns, problems or complaints about their employment with the Council. The policy will be applied fairly, consistently and in accordance with the Equality Act 2010.
5. Many problems can be raised and settled during the course of everyday working relationships. Employees should aim to settle most grievances informally with their line manager.
6. This policy confirms:
 - employees have the right to be accompanied or represented at a grievance meeting or appeal by a companion who can be a workplace colleague, a trade union representative or a trade union official. This includes any meeting held with them to hear about, gather facts about, discuss, consider or resolve their grievance. The companion will be permitted to address the grievance/appeal meetings, to present the employee's case for their grievance/appeal and to confer with the employee. The companion cannot answer questions put to the employee, address the meeting against the employee's wishes or prevent the employee from explaining their case.
 - the Council will give employees reasonable notice of the date of the grievance/appeal meetings. Employees and their companions must make all reasonable efforts to attend. If the companion is not available for the proposed date of the meeting, the employee can request a postponement and can propose an alternative date that is within five working days of the original meeting date unless it is unreasonable not to propose a later date
 - any changes to specified time limits must be agreed by the employee and the Council
 - an employee has the right to appeal against the decision about their grievance. The appeal decision is final

- information about an employee's grievance will be restricted to those involved in the grievance process. A record of the reason for the grievance, its outcome and action taken is confidential to the employee. The employee's grievance records will be held by the Council in accordance with the General Data Protection Regulation (GDPR)
- audio or video recordings of the proceedings at any stage of the grievance procedure are prohibited, unless agreed by all affected parties as a reasonable adjustment that takes account of an employee's medical condition
- if an employee who is already subject to a disciplinary process raises a grievance, the grievance will normally be heard after completion of the disciplinary procedure
- if a grievance is not upheld, no disciplinary action will be taken against an employee if they raised the grievance in good faith
- the Council may consider mediation at any stage of the grievance procedure where appropriate, (for example where there have been communication breakdowns or allegations of bullying or harassment). Mediation is a dispute resolution process which requires the consent of affected parties
- Employees can only use all stages of the grievance procedure if the complaint is not a code of conduct complaint about a councillor. Employees can use the informal stage of the council's grievance procedure (paragraph 4) to deal with all grievance issues, including a complaint about a councillor. Employees cannot use the formal stages of the council's grievance procedure for a code of conduct complaint about a councillor. If the complaint about the Councillor is not resolved at the informal stage, the employee can contact the monitoring officer of Herefordshire Council who will inform the employee whether or not the complaint can be dealt with under the code of conduct. If it does not concern the code of conduct, the employee can make a formal complaint under the council's grievance procedure (see paragraph 5)
- the Council may engage external investigators, grievance or appeal panels for the purposes of the process.
- If the grievance is a code of conduct complaint against a Councillor, the employee cannot proceed with it beyond the informal stage of the council's grievance procedure. However, whatever the complaint, the council has a duty of care to its employees. It must take all reasonable steps to ensure employees have a safe working environment, for example by undertaking risk assessments, by ensuring staff and Councillors are properly trained and by protecting staff from bullying, harassment and all forms of discrimination
- If an employee considers that the grievance concerns their safety within the working environment, whether or not it also concerns a complaint against a Councillor, the employee should raise these safety concerns with their line manager at the informal stage of the grievance procedure. The council will

consider whether it should take further action in this matter in accordance with any of its employment policies (for example its health and safety policy or its dignity at work policy) and in accordance with the code of conduct regime

Informal grievance procedure

7. The Council and its employees benefit if grievances are resolved informally and as quickly as possible. As soon as a problem arises, the employee should raise it with their manager to see if an informal solution is possible. Both should try to resolve the matter at this stage. If the employee does not want to discuss the grievance with their manager (for example, because it concerns the manager), the employee should contact their Line Manager or the Chairman of the Resources Committee or, if appropriate, another member of the Resources Committee. If the employee's complaint is about a Councillor, it may be appropriate to involve that Councillor at the informal stage. This will require both the employee's and the Councillor's consent.

Formal grievance procedure

8. If it is not possible to resolve the grievance informally and the employee's complaint is not one that should be dealt with as a code of conduct complaint (see above), the employee may submit a formal grievance. It should be submitted in writing to the Town Clerk, or Chair of the Resources Committee if the complaint is in relation to the Clerk.
9. The Resources Committee will appoint a sub-committee of 3 members to hear the grievance in the event that the grievance is raised by or relates to the Clerk. Where the grievance is not raised by or relates to the Clerk, the Committee may appoint the Clerk to hear the Grievance. The sub-committee will appoint a Chairman from one of its members. No Councillor with direct involvement in the matter shall be appointed to the sub-committee.

Investigation

10. If the sub-committee decides that it is appropriate, (e.g. if the grievance is complex), it may appoint an investigator to carry out an investigation before the grievance meeting to establish the facts of the case. The investigator may be an appropriate employee, Councillor or external party. The investigation may include interviews (e.g. the employee submitting the grievance, other employees, Councillors or members of the public).
11. The investigator will summarise their findings (usually within an investigation report) and present their findings to the sub-committee.

Notification

12. Within 14 calendar days of the Council receiving the employee's grievance (this may be longer if there is an investigation), the employee will normally be asked, in writing, to attend a grievance meeting. The written notification will include the following:
- the names of its Chairman and other members
 - the date, time and place for the meeting. The employee will be given reasonable notice of the meeting which will normally be within 35 calendar days of when the Council received the grievance
 - the employee's right to be accompanied by a workplace colleague, a trade union representative or a trade union official
 - a copy of the Council's grievance policy
 - confirmation that, if necessary, witnesses may attend (or submit witness statements) on the employee's behalf and that the employee should provide the names of their witnesses as soon as possible before the meeting
 - confirmation that the employee will provide the Council with any supporting evidence in advance of the meeting, usually with at least two days' notice
 - findings of the investigation if there has been an investigation
 - an invitation for the employee to request any adjustments to be made for the hearing (for example where a person has a health condition).

The grievance meeting

13. At the grievance meeting:
- the Chairman will introduce the members of the sub-committee to the employee
 - the employee (or companion) will set out the grievance and present the evidence
 - the Chairman will ask the employee questions about the information presented and will want to understand what action does they wants the Council to take
 - any member of the sub-committee and the employee (or the companion) may question any witness
 - the employee (or companion) will have the opportunity to sum up the case
 - a grievance meeting may be adjourned to allow matters that were raised during the meeting to be investigated by the sub-committee.

14. The Chairman will provide the employee with the sub-committee's decision, in writing, within 7 calendar days of the meeting though this may be longer e.g. where further investigations are required. The letter will notify the employee of the action, if any, that the Council will take and of the employee's right to appeal.

The appeal

15. If an employee decides that their grievance has not been satisfactorily resolved by the sub-committee, they may submit a written appeal to the Resources Committee. An appeal must be received by the Council within 7 calendar days of the employee receiving the sub-committee's decision and must specify the grounds of appeal.
16. Appeals may be raised on a number of grounds, e.g.:
 - a failure by the Council to follow its grievance policy
 - the decision was not supported by the evidence
 - the action proposed by the sub-committee was inadequate/inappropriate
 - new evidence has come to light since the grievance meeting.
17. The appeal will be heard by a panel of 3 members of the Resources committee who have not previously been involved in the case. There may be insufficient members of the Resources committee who have not previously been involved. If so, the appeal panel will be a committee of three Council members who may include members of the Resources committee. The Council may engage external parties if there are insufficient Councillors to form the panel. The appeal panel will appoint a Chairman from one of its members.
18. The employee will be notified, in writing, within 14 calendar days of receipt of the appeal of the time, date and place of the appeal meeting. The meeting will normally take place within 35 calendar days of the Council's receipt of the appeal. The employee will be advised that they may be accompanied by a workplace colleague, a trade union representative or a trade union official.
19. At the appeal meeting, the Chairman will:
 - introduce the panel members to the employee
 - explain the purpose of the meeting, which is to hear the employee's reasons for appealing against the decision of the staffing sub-committee
 - explain the action that the appeal panel may take.
20. The employee (or companion) will be asked to explain the grounds of appeal.
21. The Chairman will inform the employee that they will receive the decision and the panel's reasons, in writing, and when they are likely to receive the letter. This

may be within 14 calendar days of the appeal meeting, however will be longer where further investigations are required.

22. The appeal panel may decide to uphold the decision of the staffing committee or substitute its own decision.
23. The decision of the appeal panel is final.

Date of policy:

Approving committee:

Date of committee meeting:

Supersedes: [Grievance Policy & Procedure – 29.05.2023]

Policy effective from:

Date for next review:



LEDBURY TOWN COUNCIL

DISCIPLINARY PROCEDURE

Date Adopted: 29/06/2023

Next Review: 28/02/2025

LEDBURY TOWN COUNCIL

DISCIPLINARY PROCEDURE

PURPOSE OF PROCEDURE

This procedure is designed to help and encourage all council employees to achieve and maintain high standards of conduct whilst at work or representing the Council. The aim is to ensure consistent and fair treatment for all. This procedure is prepared in accordance with the dismissal and dispute resolution procedures as set out in the Employment Act 2008 and the ACAS Code of Practice APR 2009.

PRINCIPLES

1. No disciplinary action will be taken against an employee until the case has been fully investigated.
2. At every stage in the procedure the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made.
3. At all formal stages the employee will have the right to be accompanied by a trade union representative or work colleague during the disciplinary interview.
4. No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty of dismissal without notice or payment in lieu of notice may be applied.
5. An employee will have the right to appeal against any disciplinary penalty imposed.
6. The procedure may be implemented at any stage if the employee's alleged misconduct warrants such an action.

Procedure for misconduct and gross misconduct

1. The following list provides examples of **misconduct** which will normally give rise to formal disciplinary action:
 - Unauthorised absence from work
 - Persistent short-term and/or frequent absences from work without a medical reason
 - Lateness for work or poor time keeping
 - Inappropriate standard of dress
 - Minor breaches of Health & Safety or other Council rules or procedures
 - Failure to perform your job to the standard expected or in line with your job description/objectives
 - Time wasting
 - Disruptive behaviour

- Misuse of the council's facilities (e.g., telephone, computers, email, or the internet)
- Excessive use of personal mobile phones
- Refusal to carry out reasonable requests or instructions
- Failure to follow agreed council procedures

This list is not exhaustive and offences of a similar nature will result in disciplinary action being instigated. N.B. persistent or frequent absence on medical grounds and long-term sickness absence will be dealt with using a procedure for incapacity which is described in the Absence Policy.

2. The following list provides examples of offences which are normally regarded as **gross misconduct**:

- Theft, fraud, deliberate falsification of records, or other acts of dishonesty
- Fighting, assault on another person
- Deliberate damage to property of the council, its workers, or members
- Gross incompetence in the conduct of work
- Gross negligence which results in the council or employees being put at risk
- Being under the influence of illegal drugs or excessive alcohol
- Acts of incitement towards or actual acts of discrimination, harassment, or victimisation, including on the grounds of protected characteristics
- Serious acts of insubordination
- Serious breach of duty to keep information of the council, its service providers, and its clients confidential
- Unauthorised entry to computer records
- Serious breach of the council's Health & Safety, confidentiality, or communications policies
- Any action, whether committed on or off the premises, which is likely to or does bring the council into disrepute
- Serious negligence which causes or might cause significant loss, damage, or injury
- Accepting bribes or incentive payments from suppliers
- unauthorised use of council funds or credit
- working with an external agency to provide information which would be detrimental to and cause commercial risk to the council

This list is not exhaustive and other offences of a similar gravity will result in disciplinary action being instigated at Gross Misconduct level which carries a potential penalty of dismissal. Gross Misconduct is generally any conduct which places extreme pressure on the mutual trust which exists in an employment relationship.

3. TYPES OF ACTION

3.1 Informal Action

Minor misconduct will be dealt with informally usually in a confidential one-to-one meeting between the employee and line manager. In the case of the Clerk being the individual against whom there is a complaint or allegation the matter should be handled discreetly by members of the Resources Committee and involve an informal meeting initially. However, where the matter is more serious or informal action has not brought about the necessary improvement the following procedure will be used.

3.2. Formal Action

The level of warning you may receive for misconduct/gross misconduct will depend on how serious the council considers the alleged actions to be and your previous conduct in the circumstances. In the event of alleged gross misconduct, the formal process may commence at Stage 4 (see below).

3.3. Disciplinary Letters

If there is a concern about an employee's conduct or behaviour then a letter will be given to the employee advising them of the allegation(s) and reasons why this is unacceptable. The letter will invite the employee to attend a meeting at which the alleged misconduct will be discussed and will inform the employee of their right to be accompanied to the meeting. The letter will specify at which stage the disciplinary procedure is being invoked (see formal stages below) and if invoked at Stage 4 for Gross Misconduct the letter will warn that a potential outcome could be dismissal. The time, date and venue of the meeting will also be advised. Any documents to be produced at the meeting will also be provided.

3.4 Disciplinary Meetings

The time and location of a disciplinary meeting will be agreed with the employee, and it will be held in a private location with no interruptions. This will normally be without undue delay but allowing the employee to prepare their case e.g., within 5- working days of the letter being sent, where practically possible. At the meeting the manager (or in the case of the Clerk being disciplined the Chair of the Resources Committee) will state the complaint against the employee and go through the evidence which has been gathered. The employee will also be allowed to ask questions, present evidence, and call witnesses if advance notice has been given that they will do so.

If the employee is unable to attend the meeting due to unforeseen reasons out of their control (e.g., illness) then the council will reasonably

rearrange the meeting. However, if the employee fails to attend the meeting without good reason the meeting can be held in their absence.

4. **OUTCOMES AND PENALTIES**

4.1 Stage 1 First Warning

In the instance of a first complaint that conduct does not meet acceptable standards, the employee will normally be given a formal ORAL WARNING. They will be advised of:

- the reason for the warning
- that it is the first stage of the disciplinary procedure
- the improvement that is required and the timescales for achieving this improvement,
- together with a review date and any support available (where applicable) and
- their right of appeal

A record of the first written warning will be kept for 6-months, when subject to satisfactory conduct will be spent.

4.2 Stage 2 - Second Written Warning

If the offence is a serious one, or there is a repetition of the conduct subject to the first written warning, a second written warning will be given to the employee by the Line Manager. This will give details of the complaint, the improvement required and the timescales. It will warn that action under Stage 3 will be considered if there is no satisfactory improvement and will advise of the right of appeal. A copy of this written warning will be kept on file, but it will be disregarded for disciplinary purposes after 12-months subject to satisfactory conduct.

4.3 Stage 3 - Final Written Warning

If there is still a failure to improve and conduct or performance is still unsatisfactory, or the misconduct is sufficiently serious, a final written warning will normally be given to the employee. This will give details of the complaint, will warn that dismissal will result if there is no satisfactory improvement and will advise of the right of appeal. A copy of this final written warning will be kept by the Line Manager (or in the case of the Clerk being disciplined by the Chair of the Resources Committee) but it will be spent after 12-months (in exceptional cases the period may be longer) subject to satisfactory conduct.

4.4 Stage 4 – Dismissal or other sanctions

If conduct is still unsatisfactory and the employee still fails to reach the prescribed standards, or where the Council reasonably believes Gross Misconduct has occurred, dismissal may result. Only the appropriately convened hearing panel can take the decision to dismiss an employee. The employee will be given a written statement of allegations against them, invited to a meeting and then be notified in writing of the reasons for the decision taken at the hearing. Penalties at this stage may include dismissal with notice or summary dismissal (i.e., without any notice), Final Written Warning with/without demotion, loss of pay or loss of seniority. If dismissal is the outcome, the employee will be advised of the date on which employment will terminate. In all cases the employee has a right of appeal.

Very exceptionally, if an offence of Gross Misconduct is extremely serious an employee can be dismissed immediately without a meeting. In this situation a letter setting out reasons for dismissal would be sent to the employee offering the opportunity for an appeal hearing.

5. **SUSPENSION**

If you are accused of an act of gross misconduct, you may be suspended from work on full pay while the council investigates the alleged offence. Only the appropriately convened committee has the power to suspend. This enables a swift and thorough investigation to occur. Whilst suspended pending disciplinary investigation regular contact with a nominated person at the council will be maintained although access to premises, equipment or systems may be denied. The Investigator who compiles evidence for the disciplinary hearing must play no part in the subsequent decision-making to ensure impartiality. Council needs to consider the implications of such arrangements on its hearing and appeal panel plans early on in the disciplinary process.

6. **APPEALS**

The Appeals stage of the disciplinary process is part of the Code of Practice to which an employee has a right. It can be exercised after any of the stages of disciplinary action for Misconduct/Poor Performance or Gross Misconduct.

An employee who wishes to appeal against a disciplinary decision should inform the Clerk (or Chair or Resources Committee) within five working days, in writing and giving reasons for the appeal. An Appeal may be raised if:

- the employee thinks the finding or penalty is unfair
- new evidence has become known
- the employee thinks that the procedure was not applied properly

Where possible the Appeal will be heard by a separate panel of elected members who have not been involved in the original disciplinary hearing, who will view the evidence with impartiality. The employee will have the right to be

accompanied by a colleague or accredited Trade Union official or lay member at the appeal hearing. The outcome of the appeal and reasons for it will be advised to the employee as soon as possible after the meeting and be confirmed in writing. At the Appeal hearing any disciplinary penalty imposed will be reviewed but it cannot be increased. The decision of the Appeal hearing is final.

7. THE RIGHT TO BE ACCOMPANIED

At each formal stage of disciplinary interview an employee has the right to be accompanied and can make a reasonable request to be accompanied. An employee can ask any other employee or trade union representative, or an appropriately accredited official employed by a trade union to accompany them, to give support and help them prepare for the disciplinary interview.

This right is enshrined in the 1999 Employment Relations Act. As this is an internal process there is no provision to have any external person accompany or represent an employee e.g., partner, parent, solicitor etc. The companion can address the hearing, put, and sum up the employee's case, respond on behalf of the worker to any views expressed at the meeting, confer with the employee. The companion cannot however answer questions on the employee's behalf or address the hearing if the employee does not wish them to or prevent the employee explaining their case.

8. HEARING PANELS

The Council will establish a hearing panel to hear disciplinary and grievance hearings as required. This will be done in a timely manner.

9. NOTE-TAKING

A note-taker will be provided at every meeting/hearing which arises as a result of a disciplinary process as Employment Tribunals are particularly keen to view contemporaneous notes of events which have led to an employment dispute. The Council will need to give this requirement careful consideration in order to respect employee confidentiality.

10. GRIEVANCES RAISED DURING DISCIPLINARIES

In some circumstances when a disciplinary process has commenced an employee chooses to exercise their right to raise an internal grievance about the employment relationship with the council or individual Members. If a grievance is raised during the process the disciplinary process will be put on hold until grievances have been aired and actions towards a resolution have been progressed.

11. CRIMINAL CHARGES OR CONVICTIONS

If an employee is charged with or convicted of a criminal offence this does not automatically give rise to a disciplinary situation. Consideration will be given to how a charge or conviction may affect an employee's ability to undertake the duties of their job and their relationships with the employer, colleagues, subordinates, or customers.

12. GETTING IT WRONG

The Council will follow the ACAS Code of Practice which can be found at www.acas.org.uk.

LEVELS OF RESPONSIBILITY FOR DISCIPLINARY DISMISSALS

MANAGEMENT LEVEL	ACTION	APPEAL
Mayor/Chairman	Dismissal of Town Clerk	Resources Committee
Town Clerk	All Dismissals	Resources Committee

Levels of Responsibility for Disciplinary Warnings

MANAGEMENT LEVEL	ACTION	APPEAL
Mayor/Chairman	Warnings to Town Clerk	Resources Committee
Town Clerk	Warnings to Deputy Clerk, Accounts Clerk	Resources Committee
Deputy Clerk	Warnings to all other staff	Town Clerk

LEDBURY TOWN COUNCIL

DISCIPLINARY POLICY

Introduction

- 1 This policy is based on and complies with the 2015 ACAS Code of Practice (<http://www.acas.org.uk/index.aspx?articleid=2174>).
- 2 It also takes account of the ACAS guide on discipline and grievances at work. https://www.acas.org.uk/media/1043/Discipline-and-grievances-at-work-The-Acas-guide/pdf/DG_Guide_Feb_2019.pdf
- 3 The policy is designed to help Council employees improve unsatisfactory conduct and performance in their job. Wherever possible, the Council will try to resolve its concerns about employees' behaviour informally, without starting the formal procedure set out below.
- 4 The policy will be applied fairly, consistently and in accordance with the Equality Act 2010.
- 5 This policy confirms:
 - informal coaching and supervision will be considered, where appropriate, to improve conduct and/or attendance
 - the Council will fully investigate the facts of each case
 - the Council recognises that misconduct and unsatisfactory work performance are different issues. The disciplinary policy will also apply to work performance issues to ensure that all alleged instances of employees' underperformance are dealt with fairly and in a way that is consistent with required standards. However, the disciplinary policy will only be used when performance management proves ineffective. For more information see ACAS "Performance Management" at: <https://www.acas.org.uk/index.aspx?articleid=6608>
 - employees will be informed in writing about the nature of the complaint against them and given the opportunity to state their case
 - employees will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary hearing
 - employees may be accompanied or represented by a companion – a workplace colleague, a trade union representative or a trade union official - at any investigatory, disciplinary or appeal meeting. The companion is permitted to address such meetings, to put the employee's case and confer with the employee. The companion cannot answer questions put to the employee, address the meeting against the employee's wishes or prevent the employee from explaining his/her case

- the Council will give employees reasonable notice of any meetings in this procedure. Employee must make all reasonable efforts to attend. Failure to attend any meeting may result in it going ahead and a decision being taken. An employee who does not attend a meeting will be given the opportunity to be represented and to make written submissions
- if the employee's companion is not available for the proposed date of the meeting, the employee can request a postponement and can propose an alternative date that is within 7 calendar days of the original meeting date unless it is unreasonable not to propose a later date
- any changes to specified time limits in the Council's procedure must be agreed by the employee and the Council
- information about an employee's disciplinary matter will be restricted to those involved in the disciplinary process. A record of the reason for disciplinary action and the action taken by the Council is confidential to the employee. The employee's disciplinary records will be held by the Council in accordance with the General Data Protection Regulation (GDPR)
- audio or video recordings of the proceedings at any stage of the disciplinary procedure are prohibited, unless agreed by all affected parties as a reasonable adjustment that takes account of an employee's medical condition
- employees have the right to appeal against any disciplinary decision. The appeal decision is final
- if an employee who is already subject to the Council's disciplinary procedure raises a grievance, the grievance will normally be heard after the completion of the disciplinary procedure
- disciplinary action taken by the Council can include a written warning, final written warning or dismissal
- this procedure may be implemented at any stage if the employee's alleged misconduct warrants this
- except for gross misconduct when an employee may be dismissed without notice, the Council will not dismiss an employee on the first occasion that it decides there has been misconduct
- if an employee is suspended following allegations of misconduct, it will be on full pay and only for such time as is necessary. Suspension is not a disciplinary sanction. The Council will write to the employee to confirm any period of suspension and the reasons for it,
- the Council may consider mediation at any stage of the disciplinary procedure where appropriate (for example where there have been communication breakdowns or allegations of bullying or harassment). Mediation is a dispute resolution process that requires the consent of affected parties

Examples of misconduct

6 Misconduct is employee behaviour that can lead to the employer taking disciplinary action. The following list contains some examples of misconduct: The list is not exhaustive.

- unauthorised absence
- poor timekeeping
- misuse of the Council's resources and facilities including telephone, email and internet
- inappropriate behaviour
- refusal to follow reasonable instructions
- breach of health and safety rules.

Examples of gross misconduct

7 Gross misconduct is misconduct that is so serious that it is likely to lead to dismissal without notice. The following list contains some examples of gross misconduct: The list is not exhaustive

- bullying, discrimination and harassment
- incapacity at work because of alcohol or drugs
- violent behaviour
- fraud or theft
- gross negligence
- gross insubordination
- serious breaches of council policies and procedures e.g. the Health and Safety Policy, Equality and Diversity Policy, Data Protection Policy and any policies regarding the use of information technology
- serious and deliberate damage to property
- use of the internet or email to access pornographic, obscene or offensive material
- disclosure of confidential information.

Suspension

8 If allegations of gross misconduct or serious misconduct are made, the council may suspend the employee while further investigations are carried out. Suspension will be on full pay. Suspension does not imply any determination of guilt or innocence, as it is merely a measure to enable further investigation.

9 While on suspension, the employee is required to be available during normal hours of work in the event that the council needs to make contact. The employee must not contact or attempt to contact or influence anyone connected with the investigation in any way or to discuss this matter with any other employee or Councillor.

- 10 The employee must not attend work. The council will make arrangements for the employee to access any information or documents required to respond to any allegations.

Examples of unsatisfactory work performance

- 11 The following list contains some examples of unsatisfactory work performance: The list is not exhaustive.
 - inadequate application of management instructions/office procedures
 - inadequate IT skills
 - unsatisfactory management of staff
 - unsatisfactory communication skills.

The Procedure

- 12 Preliminary enquiries - The council may make preliminary enquiries to establish the basic facts of what has happened in order to understand whether there may be a case to answer under the disciplinary procedure.
- 13 If the employee's manager believes there may be a disciplinary case to answer, the council may initiate a more detailed investigation undertaken to establish the facts of a situation or to establish the perspective of others who may have witnessed misconduct.
- 14 Informal Procedures - Where minor concerns about conduct become apparent, it is the manager's responsibility to raise this with the employee and clarify the improvements required. A file note will be made and kept by the manager. The informal discussions are not part of the formal disciplinary procedure. If the conduct fails to improve, or if further matters of conduct become apparent, the manager may decide to formalise the discussions and invite the employee to a first stage disciplinary hearing.

Disciplinary investigation

- 15 A formal disciplinary investigation may sometimes be required to establish the facts and whether there is a disciplinary case to answer.
- 16 If a formal disciplinary investigation is required, the Council's Resources Committee will appoint an Investigator who will be responsible for undertaking a fact-finding exercise to collect all relevant information. The Investigator will be independent and will normally be the Clerk or a Councillor. If the Resources Committee considers that there are one who is independent (for example, because they all have direct involvement in the allegations about the employee), it will appoint someone from outside the Council. The Investigator will be appointed as soon as possible after the allegations have been made. The

Resources Committee will inform the Investigator of the terms of reference of the investigation. The terms of reference should specify:

- the allegations or events that the investigation is required to examine
- whether a recommendation is required
- how the findings should be presented. For example, an investigator will often be required to present the findings in the form of a written report
- who the findings should be reported to and who to contact for further direction if unexpected issues arise or advice is needed.

- 17 The Investigator will be asked to submit their findings usually within 35 Calendar days of appointment where possible. In cases of alleged unsatisfactory performance or of allegations of minor misconduct, the appointment of an investigator may not be necessary, and the Council may decide to commence disciplinary proceedings at the next stage - the disciplinary meeting (see paragraph 22).
- 18 The Clerk will notify the employee in writing of the alleged misconduct and details of the person undertaking the investigation. The employee may be asked to meet an investigator as part of the disciplinary investigation. The employee will be given sufficient notice of the meeting with the Investigator so that they have reasonable time to prepare for it. The letter will explain the investigatory process and that the meeting is part of that process. The employee will be provided with a copy of the Council's disciplinary procedure. The Council will also inform the employee that when they meet with the Investigator, they will have the opportunity to comment on the allegations of misconduct.
- 19 Employees may be accompanied or represented by a workplace colleague, a trade union representative or a trade union official at any investigatory meeting.
- 20 If there are other persons (e.g. employees, Councillors, members of the public or the Council's contractors) who can provide relevant information, the Investigator should try to obtain it from them in advance of the meeting with the employee.
- 21 The Investigator has no authority to take disciplinary action. Their role is to establish the facts of the case as quickly as possible and prepare a report that recommends to the Resources committee whether or not disciplinary action should be considered under the policy.
- 22 The Investigator's report will contain their recommendations and the findings on which they were based. They will recommend either:
 - the employee has no case to answer and there should no further action under the Council's disciplinary procedure

- the matter is not serious enough to justify further use of the disciplinary procedure and can be dealt with informally or
- the employee has a case to answer, and a formal hearing should be convened under the Council's disciplinary procedure.

23 The Investigator will submit the report to the Resources committee which will decide whether further action will be taken.

24 If the Council decides that it will not take disciplinary action, it may consider whether mediation would be appropriate in the circumstances.

The disciplinary meeting

25 If the Resources committee decides that there is a case to answer, it will appoint a staffing sub-committee of 3 Councillors, to formally hear the allegations. The sub-committee will appoint a Chairman from one of its members. The Investigator shall not sit on the sub-committee.

26 No Councillor with direct involvement in the matter shall be appointed to the sub-committee. The employee will be invited, in writing, to attend a disciplinary meeting. The invitation letter will confirm the following:

- the names of its Chairman and other two members
- details of the alleged misconduct, its possible consequences and the employee's statutory right to be accompanied at the meeting
- a copy of the information provided to the sub-committee which may include the investigation report, supporting evidence and a copy of the Council's disciplinary procedure
- the time and place for the meeting. The employee will be given reasonable notice of the hearing so that they have sufficient time to prepare for it
- that witnesses may attend on the employee's and the Council's behalf and that both parties should inform each other of their witnesses' names at least 2 working days before the meeting
 - that the employee may be accompanied by a companion - a workplace colleague, a trade union representative or a trade union official

27 The purpose of the disciplinary meeting hearing is for the allegations to be put to the employee and then for the employee to give their perspective. It will be conducted as follows:

- the Chairman will introduce the members of the sub-committee to the employee and explain the arrangements for the hearing
- the Chairman will set out the allegations and invite the Investigator to present the findings of the investigation report (if there has been a previous investigation)
- the Chairman will invite the employee to present their account

- the employee (or the companion) will set out their case and present evidence (including any witnesses and/or witness statements)
- any member of the sub-committee and the employee (or the companion) may question the Investigator and any witness
- the employee (or companion) will have the opportunity to sum up

28 The Chairman will provide the employee with the sub-committee's decision with reasons, in writing, within 7 calendar days of the meeting. The Chairman will also notify the employee of the right to appeal the decision.

29 The disciplinary meeting may be adjourned to allow matters that were raised during the meeting to be further investigated by the sub-committee.

Disciplinary action

30 If the sub-committee decides that there should be disciplinary action, it may be any of the following:

First written warning

31 If the employee's conduct has fallen beneath acceptable standards, a first written warning will be issued. A first written warning will set out:

- the reason for the written warning, the improvement required (if appropriate) and the time period for improvement
- that further misconduct/failure to improve will result in more serious disciplinary action
- the employee's right of appeal
- that a note confirming the written warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for a specified period of time (e.g. 12 months).

Final written warning

32 If the offence is sufficiently serious, or if there is further misconduct or a failure to improve sufficiently during the currency of a prior warning, the employee will be given a final written warning. A final written warning will set out:

- the reason for the final written warning, the improvement required (if appropriate) and the time period for improvement
- that further misconduct/failure to improve will result in more serious disciplinary action up to and including dismissal
- the employee's right of appeal
- that a note confirming the final written warning will be placed on the employee's personnel file, that a copy will be provided to the employee and

that the warning will remain in force for a specified period of time (e.g. 12 months).

Dismissal

- 33 The Council may dismiss:
- for gross misconduct
 - if there is no improvement within the specified time period, in the conduct which has been the subject of a final written warning
 - if another instance of misconduct has occurred and a final written warning has already been issued and remains in force.
- 34 The Council will consider very carefully a decision to dismiss. If an employee is dismissed, they will receive a written statement of the reasons for their dismissal, the date on which the employment will end and details of their right of appeal. If the sub-committee decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file. Action taken as a result of the disciplinary meeting will remain in force unless it is modified as a result of an appeal.

The appeal

- 35 An employee who is the subject of disciplinary action will be notified of the right of appeal. Their written notice of appeal must be received by the Council within 7 calendar days of the employee receiving written notice of the disciplinary action and must specify the grounds for appeal.
- 36 The grounds for appeal include;
- a failure by the Council to follow its disciplinary policy
 - the sub-committee's disciplinary decision was not supported by the evidence
 - the disciplinary action was too severe in the circumstances of the case
 - new evidence has come to light since the disciplinary meeting.
- 37 Where possible, the appeal will be heard by a panel of 3 members of the Resources Committee who have not previously been involved in the case. This includes the Investigator. There may be insufficient members of the Resources Committee who have not previously been involved. If so, the appeal panel will be a committee of 3 members of the Council who may include members of the staff committee. The appeal panel will appoint a Chairman from one of its members.

- 38 The employee will be notified, in writing, within 14 calendar days of receipt of the notice of appeal of the time, date and place of the appeal meeting. The employee will be advised that they may be accompanied by a companion - a workplace colleague, a trade union representative or a trade union official.
- 39 At the appeal meeting, the Chairman will:
- introduce the panel members to the employee
 - explain the purpose of the meeting, which is to hear the employee's reasons for appealing against the disciplinary decision
 - explain the action that the appeal panel may take.
- 40 The employee (or companion) will be asked to explain the grounds for appeal.
- 41 The Chairman will inform the employee that they will receive the decision and the panel's reasons, in writing, usually within five working days of the appeal hearing.
- 42 The appeal panel may decide to uphold the disciplinary decision of the staffing committee, substitute a less serious sanction or decide that no disciplinary action is necessary. If it decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file.
- 43 If an appeal against dismissal is upheld, the employee will be paid in full for the period from the date of dismissal and continuity of service will be preserved.
- 44 The appeal panel's decision is final.

Date of policy:

Approving committee:

Date of committee meeting:

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