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## Town Council



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### Disciplinary Policy & Procedures

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# 1 POLICY STATEMENT

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- 1.1 The aims of this Disciplinary Procedure are to set out the standards of conduct expected of all staff and to provide a framework within which the Council can work with employees to maintain satisfactory standards of conduct and to encourage improvement where necessary.
- 1.2 It is the Council's policy to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond before taking any formal action.
- 1.3 This procedure does not form part of any employee's contract of employment and it may be amended at any time. The Council may also vary this procedure, including any time limits, as appropriate in any case.

# 2 WHO IS COVERED BY THE PROCEDURE?

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- 2.1 The procedure applies to all employees regardless of length of service. It does not apply to agency workers or self-employed contractors.

# 3 WHAT IS COVERED BY THE PROCEDURE?

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- 3.1 This procedure is used to deal with misconduct. It does not apply to cases involving genuine sickness absence, proposed redundancies or poor performance. In those cases reference should be made to the appropriate policy or procedure.
- 3.2 Minor issues can often be resolved informally with the Town Clerk<sup>1</sup> without recourse to these procedures, and this is encouraged wherever possible. These discussions should be held in private and without undue delay whenever there is cause for concern. Where appropriate, a note of any such informal discussions may be placed on your personnel file but will be ignored for the purposes of any future disciplinary hearings. In some cases an informal verbal warning may be given, which will not form part of your disciplinary records. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).

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<sup>1</sup> References to the Town Clerk in this document should be changed to the Town Mayor if the Town Clerk is the subject of the potential disciplinary action.

- 3.3 An employee would not normally be dismissed for a first act of misconduct, other than for an act of gross misconduct or if the employee has not yet completed their probationary period.
- 3.4 Any employee who believes that they would have difficulty at any stage of the procedure because of sickness, a disability or language, should discuss the situation with the Town Clerk as soon as possible.

## 4 CONFIDENTIALITY

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- 4.1 The Council's aim is to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.
- 4.2 Electronic or other recordings must not be made by any party involved in meetings or hearings conducted under this procedure.
- 4.3 An employee will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against them, unless the Town Clerk believes that a witness's identity should remain confidential.

## 5 INVESTIGATIONS

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- 5.1 Investigations will be undertaken by the Town Clerk or by an independent investigator dependent upon the circumstances of the case, though an independent investigator should be used in any case that, if upheld, could reasonably be expected to lead to a dismissal. The independent investigator will be appointed by the Town Clerk and will be totally independent of the Town Council and not connected to the case in any way.
- 5.2 The purpose of an investigation is to establish a fair and balanced view of the facts relating to any disciplinary allegations, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the employee involved and any witnesses, and/or reviewing relevant documents.
- 5.3 If an investigative interview is held, this will be solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.

- 5.4 There is no right to bring a companion to an investigative interview. The Town Clerk has discretion, however, to allow an appropriate companion if necessary to enable the employee to partake fully in the interview, such as in cases of sickness, disability or any difficulty in understanding English.
- 5.5 Employees must co-operate fully and promptly in any investigation. This will include informing the Town Clerk of the names of any relevant witnesses, disclosing any relevant documents and attending investigative interviews if required.

## 6 CRIMINAL CHARGES

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- 6.1 Where an employee's conduct is the subject of a criminal investigation, charge or conviction the Town Clerk will investigate the facts before deciding whether to take formal disciplinary action.
- 6.2 The Town Clerk will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where an employee is unable or has been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, a decision may have to be made based on the available evidence.
- 6.3 A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if the Town Clerk considers that it is relevant to your employment.

## 7 SUSPENSION

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- 7.1 In some circumstances it may be necessary for the Town Clerk to suspend an employee from work during investigation of a potential disciplinary matter. The suspension will be for no longer than is necessary to investigate the allegations and the arrangements will be confirmed in writing. A suspended employee should not visit any Council premises or contact any Councillors, clients, customers, suppliers, contractors or staff, unless authorised to do so in writing by the Town Clerk.
- 7.2 Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. Salary and any benefits will continue to be paid during the period of suspension.

## 8 NOTIFICATION OF A HEARING

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- 8.1 If the Town Clerk considers that there are grounds for disciplinary action, the employee will be required to attend a disciplinary hearing.
- 8.2 Prior to the hearing, the employee will be informed in writing of the allegations against them, the basis for those allegations, and what the likely range of consequences would be if it is decided after the hearing that the allegations are true. The following will also be provided where appropriate:
- a. a summary of relevant information gathered during the investigation;
  - b. a copy of any relevant documents which will be used at the disciplinary hearing; and
  - c. a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case as much information as possible will be provided while maintaining confidentiality.
- 8.3 Written notice will be given of the date, time and place of the disciplinary hearing. The hearing will be held as soon as reasonably practicable, but a reasonable amount of time will be given to prepare a case based on the information that has been provided.

## 9 THE RIGHT TO BE ACCOMPANIED

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- 9.1 An employee may bring a companion to any disciplinary hearing or appeal hearing under this procedure. The companion may be either a trade union representative or a colleague. The Town Clerk must be informed who this companion will be in good time before the hearing.
- 9.2 A companion who is a colleague is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.
- 9.3 If the choice of companion is unreasonable someone else may need to be chosen, for example:
- a. If, in the opinion of the Town Clerk, your companion may have a conflict of interest or may prejudice the meeting; or
  - b. if the companion is unavailable at the time a meeting is scheduled and will not be available for more than five working days afterwards.

- 9.4 The employee may, at the Town Clerk's discretion, be allowed to bring a companion who is not a colleague or union representative (for example, a family member) if there is no trade union representative or colleague able to undertake the role or if it will help overcome, for example, a disability, or difficulty understanding English.

## 10 PROCEDURE AT DISCIPLINARY HEARINGS

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- 10.1 An employee must make every effort to attend a hearing, and failure to attend without good reason may be treated as misconduct in itself. An alternative date and/or time will, however, normally be arranged on request to the Town Clerk. Failure to attend without good reason, or a persistent inability to attend (for example for health reasons), may result in a decision being taken based on the available evidence without the employee being present.
- 10.2 The case will be heard by the Town Clerk.
- 10.3 The disciplinary hearing will commence by going through the allegations being made and the evidence that has been gathered. The employee will then be able to respond and present any evidence of their own. A companion may make representations and ask questions, but should not answer questions on behalf of the employee. A private conversation may be held with a companion at any time during the hearing.
- 10.4 The disciplinary hearing may be adjourned if there is a need to carry out any further investigations such as re-interviewing witnesses in the light of any new points raised at the hearing. A reasonable opportunity will be given to consider any new information obtained before the hearing is reconvened.
- 10.5 The decision and the reasons for it will be conveyed in writing, usually within 14 days of the disciplinary hearing. Where possible this information will also be explained in person.

## 11 DISCIPLINARY PENALTIES

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- 11.1 The usual penalties for misconduct are set out below. No penalty will be imposed without a hearing. The Council aims to treat all employees fairly and consistently, and a penalty imposed on another employee for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits.

11.2 **Stage 1 - First written warning.** A first written warning will usually be appropriate for a first act of misconduct where there are no other active written warnings on a disciplinary record. Some examples of misconduct are:

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

11.3 **Stage 2 - Final written warning.** A final written warning will usually be appropriate for:

- a. misconduct where there is already an active written warning on the record; or
- b. misconduct that is considered sufficiently serious to warrant a final written warning even though there are no other active warnings on the record.

11.4 **Stage 3 - Dismissal.** Dismissal will usually only be appropriate for:

- a. any misconduct during a probationary period;
- b. further misconduct where there is an active final written warning on the record; or
- c. any gross misconduct regardless of whether there are active warnings on the record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal). Examples of gross misconduct are:
  - i Theft, or unauthorised removal of Council property or the property of a colleague, contractor, customer or member of the public; fraud, forgery or other dishonesty, including fabrication of expense claims and time sheets;
  - ii Actual or threatened violence, or behaviour which provokes violence, bullying;



- iii Deliberate damage to the Council's buildings, fittings, property or equipment, or the property of a colleague, contractor, customer or member of the public;
- iv Serious misuse of the Council's property or name;
- v Repeated or serious failure to obey instructions, or any other serious act of insubordination;
- vi Unlawful discrimination or harassment;
- vii Action that does bring or is capable of bringing the Council into serious disrepute;
- viii Serious incapability at work brought on by alcohol or illegal drugs;
- ix Causing loss, damage or injury through serious negligence;
- x Serious or repeated breach of health and safety rules or serious misuse of safety equipment;
- xi Serious breach of confidence or unauthorised use or disclosure of confidential information or failure to ensure that confidential information in your possession is kept secure;
- xii Accepting or offering a bribe or other secret payment
- xiii Conviction for a criminal offence that in the Town Clerk's opinion may affect the Council's reputation or relationships with our staff, customers or the public, or otherwise affects an employee's suitability to continue to work for the Council;
- xiv Possession, use, supply or attempted supply of illegal drugs;
- xv Serious neglect of duties, or a serious or deliberate breach of your contract or operating procedures;
- xvi Knowing breach of statutory rules affecting your work;
- xvii Unauthorised use, processing or disclosure of personal data contrary to our Data Protection Policy;

- xviii Refusal to disclose any of the information required by your employment or any other information that may have a bearing on the performance of your duties;
- xix Giving false information as to qualifications or entitlement to work (including immigration status);
- xx Knowingly taking parental, paternity or adoption leave when not eligible to do so or for a purpose other than supporting a child;
- xxi Serious misuse of the Council's information technology systems (including misuse of developed or licensed software, use of unauthorised software and misuse of e-mail and the internet, including accessing internet sites containing pornographic, offensive or obscene material);

This list is intended as a guide and is not exhaustive.

11.5 **Alternatives to dismissal.** In some cases alternatives to dismissal may be considered. This will usually be accompanied by a final written warning. Examples include:

- a. Demotion.
- b. Transfer to another job.
- c. A period of suspension without pay.
- d. Reduction in pay.
- e. Loss of future pay increments.

## 12 THE EFFECT OF A WARNING

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- 12.1 Written warnings will set out the nature of the misconduct, the change in behavior required, the period for which the warning will remain active, and the likely consequences of further misconduct in that active period.
- 12.2 A first written warning will usually remain active for six months and a final written warning will usually remain active for 12 months. In exceptional cases such as where an issue verges on gross misconduct or where warranted by specific misconduct such as a dangerous breach of health and safety, a final written warning may state that it will remain active indefinitely. Conduct may be reviewed at the end of a warning's active period and if it has not improved sufficiently the active period may be extended.

- 12.3 After the active period, the warning will remain permanently on the personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

## 13 APPEALS AGAINST DISCIPLINARY ACTION

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- 13.1 If an employee feels that disciplinary action taken against them is wrong or unjust they should appeal in writing, stating their full grounds for appeal, to the Chairman of the Management Sub-Committee within five working days of the date on which they were informed of the decision.
- 13.2 If the appeal is against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful the employee will be reinstated with no loss of continuity or pay.
- 13.3 If any new matters are raised in the appeal, it may be necessary to carry out further investigation. If any new information comes to light the employee will be provided with a summary including, where appropriate, copies of additional relevant documents and witness statements. A reasonable opportunity will be given to consider this information before the hearing.
- 13.4 An employee will be given written notice of the date, time and place of the appeal hearing. If no new matters are raised, this will normally be within fourteen days of the written notification to the Chairman of the Management Sub-Committee.
- 13.5 The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at the discretion of the Appeals Panel depending on the circumstances of the case. In any event the appeal will be dealt with as impartially as possible.
- 13.6 The appeal hearing will be conducted by an Appeals Panel made up of the Chairman and Vice Chairman of the General Purposes Committee and the Chairman and Vice Chairman of the Management Sub-Committee. Where any of these has previously been involved in the case, is unavailable, has a conflict of interest, or otherwise cannot or should not be involved, their place(s) will be taken by (an) impartial Councillor(s) appointed by the General Purposes Committee.
- 13.7 A companion may be brought to the appeal hearing (see section 9 above).
- 13.8 The appeal hearing may be adjourned if any further investigations need to be carried out in the light of any new points raised at the hearing. A reasonable

opportunity will be given to consider any new information obtained before the hearing is reconvened.

13.9 Following the appeal hearing the Panel may:

- a. confirm the original decision;
- b. revoke the original decision; or
- c. substitute a different penalty.

13.10 The employee will be informed in writing of the Appeals Panel's final decision as soon as possible, usually within five working days of the appeal hearing. Where possible this will also be explained in person. There will be no further right of appeal.