

DISCIPLINARY POLICY & PROCEDURES

INTRODUCTION

This policy is based on The ACAS statutory Code of Practice on discipline and grievance procedures – ACAS Code of Practice 1 published 11 March 2015 <https://www.acas.org.uk/codes-of-practice>

The policy and procedures will be applied fairly, consistently and in accordance with the Equality Act 2010.

Inevitably, because the Town Council is a small organisation, Members may be involved in initiating, investigating or hearing disciplinary action. Members must always follow this procedure and should always seek external support and advice when taking disciplinary action. Suitable sources of advice include the Surrey Association of Local Councils (SALC) or the Town Council's external HR provider, the Chair of the Staffing Committee is authorised to seek advice and engage the services of the HR provider for disciplinary issues.

PURPOSE AND SCOPE

This procedure is designed to help and encourage all employees to achieve and maintain standards of conduct, satisfactory work performance and attendance which are acceptable at all times, including the need to: -

- Fulfil the duties specified in their contract of employment,
- Be honest and act beyond suspicion of dishonesty, and,
- Maintain high standards of integrity and conduct to protect the Council's reputation with the public.

The aim is to ensure consistent and fair treatment for all staff. It does not apply to employees in their probationary period.

No disciplinary action will be taken against any employee for making a protected disclosure under the Council's Whistleblowing Policy.

PRINCIPLES WHICH UNDERPIN THE DISCIPLINARY PROCEDURE

This policy confirms:

- Where required the Council will access external HR support in order to provide advice and support to the Council as an employer.
- No formal disciplinary action will be taken (i.e. a formal warning) until the necessary investigations have been completed.
- The procedure may be implemented at any stage if the employee's alleged misconduct warrants this.
- The Council recognises that misconduct and unsatisfactory work performance are different issues. The disciplinary policy also applies to work performance issues to ensure that 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 the ACAS publication "How to

manage performance” at <http://www.acas.org.uk/media/pdf/m/0/How-to-manage-performance-advisory-booklet.pdf>

- Employees will be informed in writing about the nature of the complaint against them and given the opportunity to state their case.
- Employees may be accompanied by a fellow worker, a trade union representative (certified by their union as being competent to accompany a worker) or a trade union official at any disciplinary, or appeal meeting which could result in a formal warning or other disciplinary action being taken. 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. Employees 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 submission.
- 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 five working days of the original meeting date.
- Recordings of the proceedings at any stage of the disciplinary procedure are prohibited, unless agreed as a reasonable adjustment that takes account of an employee's medical condition.
- Employees have the right to appeal against any disciplinary action. The appeal decision is final
- 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.

EXAMPLES OF MISCONDUCT

Misconduct is employee behaviour that can lead to the employer taking disciplinary action. The following list contains some examples of misconduct. This list is not to be regarded as exclusive or exhaustive:

- unauthorised absence;
- poor timekeeping;
- unsatisfactory work performance (either repeated instances of poor work or one piece of very poor work);
- not working co-operatively and positively as a member of a team;
- failure to preserve the dignity, respect and privacy of others or behaviour that would breach the harmony in the workplace;
- breach of confidentiality – to an extent short of that specified under the relevant example given for Gross Misconduct;
- misuse of the Council's resources and facilities including telephone, email and internet;
- inappropriate behaviour;
- failure to follow reasonable instructions;
- breach of health and safety rules;
- impropriety or disorderly conduct whether within or outside working hours which the Council reasonably considers to be detrimental to the Council;
- failure to disclose a personal interest;
- unsatisfactory manner or/and appearance;
- any act or omission which, after investigation and due consideration to the individual circumstances is believed to amount to misconduct.

EXAMPLES OF GROSS MISCONDUCT

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. This list is not to be regarded as exclusive or exhaustive.

- intentionally making false statements when incidents or accidents are being investigated, or when applying for employment or in connection with medical examination;
- bullying, discrimination and/or harassment;
- incapacity at work because of alcohol or drugs;
- violent behaviour;
- fraud or theft;
- gross negligence;
- gross insubordination;
- serious breaches of health and safety rules;
- serious and deliberate damage to property;
- use of the internet or email to access pornographic, obscene or offensive material;
- disclosure of confidential information;
- impropriety or disorderly conduct whether within or outside working hours which the Council reasonably considers to bring or potentially bring the Council into disrepute;
- failure to disclose a personal interest;
- unsatisfactory manner or/and appearance;
- any act or omission which, after investigation and due consideration to the individual circumstances is believed to amount to gross misconduct.

EXAMPLES OF UNSATISFACTORY WORK PERFORMANCE

The following list contains some examples of unsatisfactory work performance:

- inadequate application of office procedures;
- inadequate IT skills;
- unsatisfactory management of staff;
- unsatisfactory communication skills.

DISCIPLINARY INVESTIGATION

Necessary investigations of potential disciplinary matters will be carried out without unreasonable delays. Investigations will normally be completed within 10 working days, unless otherwise agreed with the employee. The nature and extent of the investigations will depend upon the seriousness of the matter and the more serious it is then the more thorough the investigation will be.

It will not always be necessary to hold an investigatory meeting. If a meeting is held, the employee will be given advance warning and time to prepare. Employees have the right to be accompanied at an investigatory meeting by a work colleague, trade union representative, or certified workplace advocate.

Investigations are intended to establish the facts.

Where practicable, different people should carry out the investigations and the disciplinary hearing.

Where investigations are carried out against the Town Clerk, the Chair of the Staffing Committee will appoint an investigator who will be responsible for undertaking the investigation – a fact-finding exercise to collect all relevant information. The investigator will be independent and will normally be a councillor. If the Chair of the Staffing Committee considers that there are no councillors who are 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 Chair of the Staffing Committee will inform the investigator of the terms of reference of the investigation. The terms of reference should deal with the following:

- what 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 report;
- who the findings should be reported to (normally the Chair of the Staffing Committee) and who to contact for further direction if unexpected issues arise or advice is needed.

The investigator's report will contain recommendations and the findings on which they were based. The investigator will recommend either:

- the employee has no case to answer and there should be 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 the matter should proceed to the Council's disciplinary procedure.

The investigator will submit the report to the Chair of the Staffing Committee, who will present the report to the Staffing Committee without delay. The Staffing Committee will decide whether further action is to be taken.

Where investigation of potential disciplinary matters are carried out against other staff members, The Town Clerk will request that the Chair of the Staffing Committee appoints an independent person to conduct an investigation, informing the investigator of the terms of reference of the investigation. The terms of reference are to follow the guidelines set out above. The investigator is to report recommendations and findings to the Town Clerk. The investigator's report is to contain recommendations as set out above.

THE DISCIPLINARY HEARING

Disciplinary hearings will consider the outcome of the investigation, together with the employee's representations and any other matters or further investigations it wishes to conduct before deciding whether to issue a warning or dismissal. Hearings will normally be completed within 10 working days of completion of investigations, unless otherwise agreed with the employee. Employees have the right to be accompanied at a disciplinary hearing by a work colleague, trade union representative, or certified workplace advocate.

The Town Clerk will usually conduct disciplinary hearings with staff members. However, before holding the hearing, the Town Clerk is to seek advice from the Council's HR advisers and discuss the matter with the Chair of the Staffing Committee.

In the case of the Town Clerk, if the Staffing Committee decides that, following an investigation, there is a case to answer, it will appoint a Disciplinary Hearing Panel (The Panel) of three councillors (The Panel members could, if appropriate be Councillors who are not members of the Staffing Committee). The Panel members will appoint a Chair from one of its members. The original investigator shall not sit on the panel. No councillor with direct involvement in the matter shall be appointed to The Panel. The employee will be invited, in writing, to attend a disciplinary hearing. The Disciplinary Hearing Panel's letter will confirm the following:

- the names of its Chair and the other two members;
- details of the alleged misconduct, its possible consequences and the employee's statutory right to be accompanied at the hearing;
- a copy of the investigation report and all the supporting evidence;
- the time and place for the hearing; the employee will be given reasonable notice of the hearing so that they have sufficient time to prepare for it.

DISCIPLINARY ACTION

If the Disciplinary Hearing Panel decides that there should be disciplinary action, it may be any of the following:

1. First written warning

A first warning is issued for most first instances of misconduct. The Council will notify the employee:

- of the reason for the 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 to appeal;
- that a note confirming the oral 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 a period of time, usually for six months.

2. Final written warning

If there is further misconduct during the period of a written warning or if the misconduct is sufficiently serious, 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 the letter confirming the final written warning will be placed on the employee's personnel file, and that the warning will remain in force for 18 months.

3. Dismissal

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.

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 Council decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file. Action imposed as a result of the disciplinary meeting will remain in force unless and until it is modified as a result of an appeal.

Outcome letters will include the findings, any sanction, the rationale for the decision, the right of appeal, and signposting to support.

THE APPEAL

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 five working days of the employee receiving written notice of the disciplinary action and must specify the grounds for appeal.

The appeal will be heard by a panel of three members of the Staffing Committee who have not previously been involved in the case, this includes the investigator. There may be insufficient members of the Staffing Committee who have not previously been involved. If so, the appeal panel will be a committee of three members of the Council who may include members of the Staffing Committee. The appeal panel will appoint a Chair from one of its members.

Where the Town Clerk has received a warning or been dismissed, the appeal will be heard by a panel of three members of the Council not previously involved in the case. Where three members of the Council are not available, the Staffing Committee can appoint others to make up a panel. This might be councillors from other councils or other appropriate people.

The employee will be notified, in writing, usually within 10 working days of receipt of the notice of appeal of the date, time 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 certified workplace advocate.

The appeal panel may decide to uphold the 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.

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.

The appeal panel's decision is final.

DATA PROTECTION

The Council processes personal data collected during the investigation stage and any subsequent stages of disciplinary action in accordance with its Data Protection Policy. In particular, data collected as part of the investigation stage and any subsequent stages of disciplinary action is held securely and accessed by, and disclosed to, individuals only for the purposes of completing the disciplinary procedure. Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the Council's data protection policy immediately. It may also constitute a disciplinary offence, which will be dealt with under this disciplinary procedure.

All disciplinary records will be kept securely and in accordance with statutory retention and access rights under the Data Protection Act 2018 and UK GDPR.