

## **Disciplinary Procedure**

### **1. Introduction**

The aim of Trowbridge Town Council's ("the Council") Disciplinary Procedure is to encourage all employees to achieve and maintain acceptable standards of conduct and job performance. The aim is to ensure consistent and fair treatment for the individual. This procedure sets out the framework for resolving issues relating to misconduct and unsatisfactory performance in accordance with the Employment Rights Act 1996, Human Rights Act 1998, and the ACAS Code of Practice on Disciplinary Procedures.

This procedure applies to all employees except where it conflicts with a contractual or statutory requirement, which takes precedence.

### **2. General Principles**

The procedure is not a substitute for good management practices and should only be invoked when initial attempts to improve conduct have been made following discussions between the employee and their manager. However, where there has been gross misconduct or a serious breach of disciplinary rules, the formal procedure should be actioned immediately.

No disciplinary action will be taken against an employee until the circumstances have been fully investigated.

The employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case at the appropriate stage.

The employee has the right to be represented at disciplinary hearings and appeals.

In all instances of alleged misconduct, the employee will be given at least 5 working days' notice of the requirement to attend a hearing or appeal. Should the employee fail to attend without an acceptable reason, then the Chair of the hearing or appeal may proceed in the employee's absence.

Any disciplinary action taken will depend on the nature of the offence, the past recorded behaviour of the employee concerned, the consequence to the Council of the offence, and any explanation presented by the employee.

Employees have the right to appeal against any disciplinary warnings and dismissal.

### **3. Roles and Responsibilities**

Normally, the Line Manager will consider minor disciplinary issues and resolve them, if they can, without recourse to the formal procedure.

Allegations of more serious misconduct or where a previous warning has been given but the required improvement has not been made should immediately be referred to the Town Clerk who will then be responsible for nominating an Investigating Officer. If the misconduct relates to the Town Clerk, this should be referred to the Policy and Resources Committee.

The Investigating Officer who carries out an investigation should not participate in any subsequent decision to take action under the procedure. Likewise, the Investigating Officer hearing the case should not be involved in the investigation beforehand. It is important that respective roles are identified at an early stage so that those roles are not compromised.

The Investigating Officer need not be the employee's supervisor or Line Manager, although this would normally be the case. The investigating Officer could also be an external advisor.

Only the Town Clerk has the right to suspend an employee and provide written warnings for minor misconduct.

#### **4.Representation**

Employees have the right to representation, either by a trade union representative or a work colleague, at the hearing and appeal stages of the formal procedure.

Representatives have the right to address the hearing or appeal. They may also ask questions and present the employee's case. However, they have no right to answer questions on the employee's behalf.

#### **5.Informal Procedure**

##### **5.1 Informal Advice and Guidance**

Where a minor breach of acceptable/established standards of conduct occurs, which does not justify formal disciplinary action, the Line Manager will advise the employee concerned of the conduct and the standard expected in the future. In many cases, this will provide sufficient encouragement for the employee not to commit further acts of misconduct.

The employee will be offered guidance, support, and additional training – where appropriate – to achieve the necessary standards. Representation will not normally be appropriate. Managers should make a note of such informal advice and guidance and should set out in writing the required improvements and standards of conduct that are expected in the future. Records of informal advice/counselling should be provided to the **Head of Service for Resources and Venues (HOS)** and kept on employee's personal files.

The formal procedure will apply when:

- Previous informal advice or warnings have proved ineffective;
- The allegation is of a serious nature; or
- A number of minor allegations are made which taken together constitute a serious breach of discipline.

#### **6.The Formal Procedure**

##### **6.1 Suspension**

In some circumstances, the Town Clerk may consider suspension with pay, pending further investigation or until the disciplinary hearing takes place. Suspension may be appropriate where:

- Cases potentially involve gross misconduct;
- Relationships have broken down; or
- There is a risk to the employer's property or to other people.

An employee should be advised that suspension in itself does not constitute disciplinary action.

An employee should be advised of the reasons for suspension. The period of suspension should not normally last for more than 20 working days. However, this period can be extended where necessary.

The decision regarding whether or not suspension is necessary can be reviewed at any time during the disciplinary process.

##### **6.2 Investigation**

Before any decision can be made about whether or not a disciplinary hearing is necessary, an investigation must take place. The Town Clerk will appoint an appropriate Investigating Officer who will report back with their findings and make recommendations as to whether a disciplinary hearing should be convened.

The responsibilities of the Investigating Officer are to collect evidence by interviewing any relevant witnesses and gathering all documentation. An Investigatory Interview will normally be held with the employee concerned. The purpose of the interview is to gather the employee's initial response to the allegations and to identify whether any further investigation is needed.

For the benefit of the employee and the Council, any investigation must be concluded within a reasonable timescale. If there is a delay in completing the investigation, it is the responsibility of the Investigating Officer to regularly update the employee or their representatives on the progress of the investigation.

Once the Investigating Officer has gathered all the relevant facts and reviewed the evidence, a report should be drafted to the Town Clerk recommending one of the following:

- Take no further action and inform the employee accordingly;
- Advise the arrangement of counselling, training, extra supervision, or written advice (as appropriate); or
- Arrange a disciplinary hearing.

### **6.3 Arranging a Disciplinary Hearing**

If, following the recommendations of the Investigating Officer, the Town Clerk concludes that a hearing is required then the necessary arrangements should be made by the **HOS**. The employee will be given at least 5 working days' notice in writing. The letter should include a clear written statement of the allegation and should enclose any documentary evidence being relied upon and a reminder of the employee's right to be represented.

The Investigating Officer is responsible for presenting the case and making arrangements for any witnesses that he or she relies upon to attend the meeting.

The employee is responsible for arranging any representation they choose to have and any witnesses that they may wish to call. Details of any witnesses the employee intends to call and a copy of all documents that the employee may wish to refer to at the hearing must be submitted to the Investigating Officer at least 3 working days prior to the hearing.

### **6.4 Conducting a hearing**

The Panel for a hearing will normally comprise of the Town Clerk, the Line Manager or another Manager, **HOS** and if necessary a Councillor.

The objective is:

- To hear the evidence in respect of the allegation, the employee's response, and to decide whether or not the allegation is substantiated; and
- If the allegation is substantiated, to determine the disciplinary sanction to be applied in light of the seriousness of the offence and having regard to previous relevant disciplinary history.

The procedure to be followed is:

1. Introduction of the Panel members and outline of their roles;
2. Statement of the purpose of the hearing and the allegation;
3. Presentation of the case by the Investigating Officer with witnesses called as necessary;
4. Questions by employee or their representative;
5. Questions by the Panel;
6. Presentation of the case by the employee or their representative with witnesses called as necessary;
7. Questions from Investigating Officer;
8. Questions from Panel;

9. Concluding statement by Investigating Officer;
10. Concluding statement by employee or their representative;
11. Adjournment of the Panel to make their decision;
12. The Panel reconvenes and the employee/representative is informed of the decision and, if necessary, their rights of appeal.

Requests for an adjournment can be made at any stage and it is up to the Chair to decide whether or not a request should be granted.

The decision of the Panel will be confirmed to the employee in writing within 5 working days. The letter should clearly set out:

- The Panel's decision;
- The length of time that any warning will be active for;
- The expected improvement in conduct;
- Any assistance that will be provided to achieve this; and
- The employee's right to appeal.

## 6.5 Levels of Disciplinary Action

In determining the appropriate disciplinary action, regard should be given to the employee's previous record, the gravity of the offence, and any explanation given.

Outcome	Description
Verbal Warning	For a minor offence, a formal verbal warning (confirmed in writing) making it clear that further misconduct will render the employee liable to further disciplinary action including more severe consequences.
First Written Warning	For a more serious offence or where a previous warning to the employee has not resulted in the required improvement to their conduct.
Final Written Warning	For a sufficiently serious offence, which might warrant only one written warning but is insufficiently serious to justify dismissal, or where previous warnings have been ineffective.
Dismissal with notice	For an act or acts of misconduct, other than gross misconduct, by an employee who is under a written or final written warning. The employee will be liable to dismissal with notice or pay in lieu of notice.
Dismissal without notice	In cases where gross misconduct is established, the employee will be liable to summary dismissal, i.e. without notice or pay in lieu of notice.

## 6.6 Length of Warnings

Records of informal meetings and formal warnings will be kept on employee's personal files. A verbal warning will be live for 6 months, first written warnings for 12 months from the date of the disciplinary hearing and final written warnings will be live for 2 years.

## 7. The Right of Appeal

An employee has the right to appeal against disciplinary action resulting in a warning or their dismissal. Three members of the Policy and Resources Committee will hear the appeal, providing that they have had no previous involvement in the matter, assisted by an independent adviser, if appropriate.

An employee who wishes to appeal must do so in writing to the Town Clerk. This must be done within 10 working days of the disciplinary hearing informing them of the disciplinary action taken. The appeal letter must set out the grounds for the appeal, normally under one of the following headings:

- The severity of the disciplinary action;
- The findings of the Panel on a point of fact which is pertinent to the decision of the hearing; and

- A failure to adhere to the disciplinary procedure.

## **7.1 Arranging an Appeal**

The date and time of the appeal will be organised by the HOS. It is the responsibility of each side to prepare themselves for the appeal, including arranging for any witnesses to attend.

The Chair of the original Panel and the employee or their representative will, where possible, agree papers for submission to the appeal 5 days prior to the hearing.

## **7.2 Conducting an Appeal Hearing**

The objective is:

- To review the decision of the disciplinary hearing and decide whether that action is warranted or not; and
- If the action is not warranted, to determine what action if any is appropriate;

In doing so, the Appeal Panel will have regard to seriousness of the offence and any previous relevant disciplinary history.

The procedure to be followed is:

1. Presentation of the case by the Manager (the Chair of the previous hearing) who took the disciplinary action;
2. Questions by the appellant to the Manager;
3. Presentation of the appellant's case, including calling any witnesses;
4. Questions by the Manager to the appellant and their witnesses;
5. Questions by the Appeals Panel to both parties and their witnesses;
6. Concluding statements by the parties. No new information should be introduced at this stage and the appellant should have the opportunity to sum up last;
7. Adjournment of the Panel to make their decision;
8. The appeal is reconvened if possible and both parties are informed of the decision;
9. Written confirmation of the Appeals Panel's decision within 5 working days of the hearing.

The Appeals Panel has the right to call its own witnesses should it consider this to be of assistance in making its decision.

## **8. Trade Union Officials**

In normal circumstances, no action will be taken against an officer of a recognised trade union until the matter has been discussed with a full-time officer of that union.

## **9. Disciplinary Rules**

It is difficult to define all the acts of misconduct that might lead to disciplinary action. As a general principle, a test of reasonableness would be applied, i.e. would a reasonable person be aware that disciplinary action would result from a certain act or omission?

The following are examples of the types of conduct that are unacceptable and might lead to disciplinary action. The list is not exhaustive and other behaviour not listed may lead to disciplinary action.

- Poor time-keeping and / or unsatisfactory levels of attendance at work;
- Unacceptable levels of absence through sickness;
- Work performance failing to meet required standards;
- Unjustifiable absence from work without reasonable cause or authorisation;
- Waste, loss or damage of Council property through failure to take due care;
- Negligence or failure in performance of duty;

- Continuation of any areas of unsatisfactory performance or failure to address issues raised;
- Any minor breach of Health and Safety Regulation;
- Inappropriate or unauthorised use of Council's e-mail, IT, or telephone facilities;
- Being under the influence of alcohol or drugs.
- Unauthorised activities whilst on Council premises and during working hours, e.g. smoking, gambling, drinking.
- Insubordination or
- Minor incidents of disorderly conduct e.g. verbal abuse, swearing, bullying, harassment.

## **9.1 Types of Gross Misconduct**

Unacceptable conduct, which may be regarded as gross misconduct, is likely to lead to an employee's summary dismissal. This means dismissal without notice and occurs when the employment relationship between the Council and employee, and the trust which is inherent in that, is irrevocably broken.

The list below gives examples of matters likely to be regarded as gross misconduct and is not exhaustive.

- Refusing to follow reasonable management instructions;
- Theft from the Council, its Members, employees, or the public;
- Physical assault, fighting, violent behaviour or verbal abuse;
- Fraud or deliberate falsification of records;
- Falsification of qualifications;
- Serious negligence which causes unacceptable loss, injury, or damage;
- Serious acts of insubordination;
- Serious breach of confidence;
- Use of privileged information for personal gain;
- Malicious damage to the Council's property;
- Obscene and / or indecent behaviour or sexual misconduct at work;
- Discrimination, victimisation, or harassment;
- Major incidents of bullying;
- Serious breaches of safety rules;
- Serious incapability through alcohol or drugs;
- Accessing or distributing pornography on the Council's IT facilities;
- Possession or selling of illegal substances whilst on Council premises;
- Wilful refusal to carry out a reasonable and legitimate instruction from a supervisor/manager or other authorised Council employee in respect of a duty which an employee would be reasonably expected to undertake;
- Major breaches of the Council's Email, Internet & Computer Use Policy, including allowing third party access to the Council's IT system through releasing personal password information, improper use of the Internet, e.g. hacking, accessing pornography or gaming
- Serious violation of the Council's policy on delegated authority, confidentiality and standards of conduct
- Wilful damage to Council, client or other employee's property or equipment in connection with work
- Wilful breaches of the Council's Health, Safety, Environment and Welfare Policies and Procedures
- Wilful disregard for other Council's Policies and Procedures that could lead to external proceeding being brought against the Council, or actions that bring the Council into serious disrepute
- Gross misuse of the Council's IT systems for personal gain and/or the misuse of data that could have an impact on the Council's ability to undertake its business and maintain confidentiality

## **10. Training**

Appropriate training will be given to the Town Clerk or any Members who might be involved in disciplinary or appeals meetings to ensure that they fulfil their responsibilities under this procedure.

**Lance Allan – Town Clerk & Proper Officer**

**Signed:**..... **Date:**.....

*Approved at the meeting of the Policy & Resources Committee on 5<sup>TH</sup> November, 2019  
Date of next review: November 2023 unless legislation or the size and nature of the Council change.*

**DISCIPLINARY PROCEDURE**

**Acceptance Slip**

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I have received and read a copy of the Council's Disciplinary Procedure and I understand and accept the content.

Name.....

Signature.....

Date.....

*Please return completed forms to the **HR Officer***