



WELLINGTON TOWN COUNCIL DISCIPLINARY PROCEDURE

1. Introduction

This procedure is designed to help and 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. In accordance with the Employment Rights Act 1996, Human Rights Act 1998 and the ACAS Code of Practice on Disciplinary Procedures this procedure sets out the framework for resolving issues relating to misconduct and unsatisfactory performance.

This procedure will apply to all employees unless it conflicts with contractual or statutory requirement, which will take precedence.

2. General Principles

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

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

At every stage in the procedure 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 before any decision is made.

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 day's 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 (usually the Mayor as Chair of the Staffing and Resources Committee) 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

Where a minor disciplinary issue arises the line manager or the Town Clerk will normally consider the matter and will resolve it if he/she 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. He/she will then be responsible for nominating an Investigating Officer. If the misconduct relates to the Town Clerk, the matter should be referred to the Staffing and Resources Committee.

The Officer who carries out an investigation should not participate in any subsequent decision to take action under the procedure. Likewise, the 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.

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

4. Representation

Employees have the right to representation at hearings and appeals relating to any stage of the formal disciplinary procedure. This can be a trade union representative, non-union employee representative or a work colleague.

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. The Informal Procedure

5.1 Informal Advice & 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 or 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 where appropriate additional training 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 kept on employee's personal files.

However, the formal procedure will apply when: -

- previous informal advice or warnings have proved ineffective;
- the allegation is of a serious nature;
- a number of minor allegations are made which taken together constitute a serious breach of conduct.

6. The Formal Procedure

6.1 Suspension

In some circumstances the Town/Parish 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;
- there is a risk to the Council's property or to other people;
- a risk to the Council's reputation.

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 where necessary this period can be extended.

The decision whether suspension is necessary can be reviewed at anytime in 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 (or the Staffing and Resources Committee, in relation to matters concerning the Town Clerk) should appoint an appropriate Investigating Officer, who could be an external adviser. The adviser 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 should be held with the employee concerned, giving the employee 5 working days' notice, in writing. The appointment letter should outline the general nature of the allegation. The purpose of the interview is to present the findings of the investigation to the employee and allow them to answer or shed light on the potential allegations. The information provided will assist the investigating officer to decide if he/she should recommend a disciplinary hearing and/or 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 sent to the Town Clerk (or Staffing and Resources Committee) 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;
- arrange a disciplinary hearing.

6.3 Arranging a Hearing

If, following the recommendations of the Investigating Officer, the Town Clerk concludes that a hearing is required then he/she should make the necessary arrangements. The employee should 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 would normally comprise the Town Clerk (or three members of the Staffing and Resources Committee, in relation to matters concerning the Town Clerk), a member of the Staffing and Resources Committee, and an independent Human Resources representative to advise, as appropriate.

The objective is: -

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

The procedure to be followed is: -

- introduce Panel members and specify their roles;
- clarify the purpose of the hearing and state the allegation;
- presentation of the case by the investigating officer with witnesses called as necessary;

- questions by employee and/or their representative;
- questions by the Panel;
- employee and/or their representative to state their case with witnesses called as necessary;
- questions from Investigating Officer;
- questions from Panel;
- Investigating Officer to sum up;
- employee/representative to sum up;
- Panel adjourn to make their decision;
- hearing reconvened and the employee/representative 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 must 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;
- 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.

Although the procedure implies a sequential approach there may be certain circumstances where the matter needs to be considered immediately under Stages 2, 3 or 4.

Stage 1	Oral 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.
Stage 2	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.
Stage 3	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.
Stage 4	Dismissal with notice	For an act or acts of misconduct, other than gross misconduct, by an employee who is under a 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, that is 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. An oral warning will remain in place for 6 months, and a written warning will remain active for 12 months from the date of the disciplinary hearing. Final written warnings will remain in place 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 Staffing and Resources Committee will form an Appeal Panel for the hearing. They must not have had any previous involvement in the matter. The Appeal Panel will be assisted by an independent adviser.

An employee who wishes to appeal must do so in writing to the Town Clerk (or Chair of the Staffing and Resources Committee, in relation to matters concerning the Town Clerk). The letter must be received within 10 working days of the disciplinary hearing informing the employee 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;
- 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 Town Clerk (or Chair of the Staffing and Resources Committee, in relation to matters concerning the Town Clerk). 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 five 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:-

- the appellant puts their case including calling any witnesses;
- the Manager (Chair of the previous hearing) has the opportunity to ask questions of the appellant and witnesses;
- the Manager who took the disciplinary action puts their case for having done so, which may include calling any witnesses;
- the employee has the opportunity to ask questions of the Manager and witnesses;
- the Appeal Panel has the opportunity to ask questions of both parties and witnesses;
- both parties have the opportunity to sum up should they wish to do so. No new information should be introduced at this stage and the appellant should have the opportunity to sum up last;
- the meeting is adjourned to allow the Appeal Panel to reach a decision;
- the meeting is reconvened and both parties are informed of the decision;
- the Appeal Panel writes to both parties informing them of their decision within 5 working days.

The Appeal 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 which may lead to disciplinary action. As a general principle a test of reasonableness would be applied, that is to say, 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 unacceptable conduct which may lead to disciplinary action. The list is not exhaustive and other behaviour not listed may lead to disciplinary action when necessary.

- poor time-keeping/ attendance;
- unjustifiable absence from work;
- waste, loss or damage of Council property through failure to take due care;
- negligence or failure in performance of duty;
- inappropriate use or unauthorised use of e-mail, IT or telephone facilities;
- being under the influence of alcohol or drugs

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 relationship, is irrevocably broken.

As above the list gives examples of matters likely to be regarded as gross misconduct but is not exhaustive:-

- refusing to follow reasonable management instructions;
- theft from the Council, Councillors, employees or the public;
- physical assault 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;
- sexual misconduct at work;
- discrimination, victimisation or harassment;
- serious breaches of safety rules;
- serious incapability through alcohol or drugs;
- accessing or distributing pornography on the Council's IT facilities.

10. Training

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