

Axminster Town Council



Disciplinary Procedure

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1. General Introduction

This procedure is designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance. The aim is to ensure consistent and fair treatment for employees whilst promoting orderly employment relations.

2. Scope

This procedure sets out the action which will be taken when disciplinary rules are breached. Formal disciplinary action will not normally be considered as a first step (except in cases of potential Gross Misconduct). Informal discussions will be used to seek to resolve problems in the first instance. However, there will be recourse to the formal procedure for persistent breaches of conduct, if there is no improvement in performance within an agreed period, or if the required improvement fails to be maintained.

3. Principles

- a) This procedure is designed to establish the facts quickly and to deal consistently with disciplinary issues. No disciplinary action will be taken until the matter has been fully investigated.
- b) The Town Clerk has overall responsibility for the management and discipline of all council staff. However, where the Town Clerk is the subject of disciplinary action the Chairman of the Employment Committee is responsible for discipline.
- c) The Council acknowledges that there is a distinction between the conduct of an employee and their capability. In the case of a problem resulting from the employee's capability, contributory factors will be carefully considered, such as ill health, serious home-based problems or a lack of skill, knowledge or training. If the matter is due to a lack of skill, knowledge, or training the council will ensure that by appropriate training, mentoring and guidance, the employee has the opportunity to improve. The improvement required will be clearly explained to the employee, along with what support will be given and how performance will be monitored and reviewed.
- d) The disciplinary procedure consists of three stages. However, after proper consideration, the procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

Where the formal procedure has been invoked, the employee will be given written notice of at least 5 working days to attend a hearing or appeal. Should the employee fail to attend without an acceptable reason, then the Chairman of the hearing or appeal

may proceed in the employee's absence. However, the five-day limit can be extended by mutual agreement.

e) At every stage employees will be informed in writing of what is alleged and have the opportunity to state their case at a disciplinary meeting. They have the right to be represented by a Trade union representative, or accompanied by a work colleague if they so wish. No-one other than a Trades Union representative may speak on behalf of the employee, and then only if the employee is a member of that Trade Union.

3. Investigations

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.

The nature of the allegations may, at an early stage, require a decision whether to suspend the employee concerned. If so, section 5.1. of the procedure should be followed.

The responsibilities of the Investigating officer are to collect evidence by interviewing any relevant witnesses and to gather all documentation. An Investigatory Interview should be held with the employee concerned after notifying him/her, in writing with the requisite notice, to 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 him/her to answer or shed light on the potential allegations to assist the investigating officer to decide if he or 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 update the employee, or their representative, regularly on the progress of the investigation.

Once the Investigating officer has gathered all the relevant facts and reviewed the evidence, a report should be prepared for the Town Clerk/Employment 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.

If a disciplinary hearing is to go ahead, the invitation letter to the employee must be received by them at least 24 hours in advance of any meeting and contain a clear

written statement of the allegation and enclose any documentary evidence being relied upon, as well as a reminder of the employee's right to be represented.

4. Informal Procedure

The majority of issues will be dealt with informally, and the employee will be advised by either their Line Manager or the Town Clerk, as appropriate, why and how their performance/conduct needs to change and the consequences of failing to improve. A brief note of the date on which the issue was discussed and what action was agreed will be made in the employee's record. Subject to satisfactory conduct and performance, the note will be destroyed after 6 months and the employee notified accordingly.

However, the formal procedure will apply when:

- previous informal discussions and counselling have proved ineffective;
- the allegation is of a serious nature;
- a number of minor allegations are made which, when taken together, constitute a serious breach of discipline.

Where the formal disciplinary procedure is invoked, the matter should immediately be referred to the Town Clerk who will then be responsible for nominating an Investigating Officer.

5. The Formal Procedure

5.1. Suspension

In some circumstances the Town Clerk, or Chairman of the Employment Committee, 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 employer's property or to other people. An employee should be advised that suspension in itself does not constitute disciplinary action or any pre-judgement of the allegation.

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 if the circumstances warrant such action.

The decision as to whether suspension is necessary can be reviewed at any time in the disciplinary process.

- a) The employee has the right to appeal against any disciplinary penalty.
- b) This suspension must be agreed by a meeting of the full Town Council as an
- c) Agenda item.

5.2. The Hearing

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 he/she chooses to have and any witnesses that he/she 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.

The objective of the hearing is to hear the evidence in respect of the allegation, the employee's response and to decide whether or not the allegation is substantiated. If the allegation is substantiated, the panel need to determine the disciplinary sanction to be applied in light of the seriousness of the offence and with due regard to any previous relevant disciplinary history.

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; and
- the employee's right to appeal.

5.3. Sanctions

5.3.1. Verbal Warning

This will be followed up in writing.

5.3.2. Stage 1 – first warning

If conduct or performance is unsatisfactory, the employee will be given a written warning or performance note. Such warnings will be recorded on the employee's employment file, but will be disregarded after 6 months of satisfactory service.

The employee will be informed that a final written warning may be considered if there is no sustained satisfactory improvement or change.

5.3.3. Stage 2 – final written warning

If:

- the offence is deemed serious enough, or
- there is no improvement in standards after a first written warning has been issued, or
- if a further offence of a similar nature occurs,

a final written warning will be issued. This will include the reason for the warning, and notice that if no improvement is evident within 3 months, then action at Stage 3 will be taken. Final written warnings will be live on the employee's record for 12 months.

5.3.4. Stage 3 – dismissal or action short of dismissal

If the employee's conduct or performance has failed to improve within the time limits specified in this procedure, the employee may suffer demotion, disciplinary transfer, loss of seniority, dismissal with pay in lieu of notice, or in the case of proven gross misconduct, dismissal without notice.

Should this be the case, the employee will be asked to attend a meeting with a member of the Employment Committee and will be advised of the decision that has been taken. This will be followed up in writing.

6. Gross Misconduct

If, after investigation, it is confirmed that an employee has committed a serious offence, the normal consequence will be immediate dismissal, without notice, or payment in lieu of notice.

Examples of this type of offence are:

- Bringing the council into serious disrepute
- Theft
- Malicious damage to Council property
- Fraud or deliberate falsification of records
- Incapacity for work due to being under the influence of illegal drugs or alcohol
- Physical violence
- Criminal offence, whether committed on or off duty, which is of such a nature that it fundamentally breaches the trust which is the basis of the contractual relationship
- Bullying, discrimination, victimisation or harassment
- Gross insubordination
- Falsification of qualifications
- Serious negligence which causes unacceptable loss, injury or damage
- Misuse of the Council's IT facilities

This list is not exhaustive of the type of offences which may be considered gross misconduct.

While the alleged gross misconduct is being investigated, the employee may be suspended, during which time he/she will be paid their normal rate of pay. Any decision to dismiss will be taken by the employer only after full investigation.

7. Appeals

An employee who wishes to appeal against any disciplinary decision must do so to the Town Clerk (or in the case of the Town Clerk, the Chairman of the Employment Sub-Committee) within 5 working days of the date on which they received the decision notice of the disciplinary action to be taken against them, setting out their grounds for appeal.

The objective of the Appeal process 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. It is possible that disciplinary penalties may be increased on appeal;
- and to have regard to seriousness of the offence and any previous relevant disciplinary history.

A panel, that have had no previous involvement in the matter, will arrange to hear the appeal and decide the case as impartially as possible. The Appeal will be heard as soon as possible and normally this will be within three weeks of receipt of the Notice of Appeal. The decision following the Appeal will be final. The Appeals Panel will write to both parties informing them of their decision within 5 working days of the appeals hearing.

8. Exceptional Circumstances

The circumstances below do not apply for consideration in the case of gross misconduct, as it is regarded as misconduct serious enough to destroy the trust within the employment contract, thus making any further working relationship impossible.

8.1. Trade Union Activities

No disciplinary action will be taken against a Shop Steward until the circumstances of the case have been discussed with the Town Clerk and a full time official of the Trade Union concerned.

No disciplinary action will be taken against any employee in respect of alleged misdemeanours which stem from Trade Union activities until such matters have been discussed with the Town Clerk and Trade Union Secretary as appropriate. In the event that the employee concerned is the Town Clerk, no action will be taken against them until the matters have been discussed with the Chairman of the Employment Sub-Committee and Trade Union Secretary as appropriate.

8.2. Criminal Charges or Convictions, not related to Employment

If an employee is charged with, or convicted of, a criminal offence that is unrelated to their work this is not in itself a reason for disciplinary action. The Town Clerk will

establish the facts of the case and will consider whether the employee's conduct merits further investigation or action under this procedure.

Where the Town Clerk is the employee in question, the Chairman of the Employment Committee will take the decision whether further investigation or action under this procedure is required.

The main considerations will be whether the offence or alleged offence makes the employee unsuitable for their type of work and the impact it will have on their relationship with their employer, work colleagues and customers. An employee should not be dismissed solely because they are absent from work as a result of being remanded in custody.

8.3. Overlapping Grievance and Disciplinary Cases

If an employee raises a grievance during the 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.

8.4. Other Cases

The Disciplinary Procedure does not apply to termination of employment in the following cases:

- on termination of a fixed-term or temporary contract;
- in the event of redundancy, including if making more than twenty people redundant at one establishment in a period of ninety days when a different statutory regime applies;
- where dismissal arises from unsuitability for confirmation of employment;
- where the employee cannot continue in the particular position without contravening a statutory requirement.