



Devizes Town Council

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DISCIPLINARY PROCEDURE

1. PURPOSE AND SCOPE

This procedure is designed to help and encourage all council employees to achieve and maintain high standards of conduct whilst at work or representing the council. The aim is to ensure consistent and fair treatment for all. This procedure is prepared in accordance with the dismissal and dispute resolution procedures as set out in the Employment Act 2008 and the ACAS Code of Practice APR 2009

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.

2. GENERAL PRINCIPLES

- a) No disciplinary action will be taken against an employee until the case has been fully investigated
- b) 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.
- c) At all formal stages the employee will have the right to be accompanied by a trade union representative or work colleague during the disciplinary interview.
- d) 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 mitigating circumstances presented by the employee
- e) Any disciplinary action taken against the employee will be appropriate to the circumstances of the case and having regard to the need for reasonableness and fairness on the part of the Council.
- f) No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty of dismissal without notice or payment in lieu of notice may be applied.
- g) An employee will have the right to appeal against any disciplinary penalty imposed.
- h) The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.
- i) In the event that the Chair of Personnel Panel is unable to undertake their duties under the code, due to lack of availability or some other reason, another member will be nominated to act in their stead.

3. MISCONDUCT and GROSS MISCONDUCT

3.1.1 The following list provides examples of **misconduct**, which will normally give rise to formal disciplinary action:

- Unauthorised absence from work
- Persistent short-term and/or frequent absences from work without a medical reason
- Lateness for work or poor time keeping
- Inappropriate standard of dress
- Minor breaches of Health and Safety or other rules or procedures
- Failure to perform your job to the standard expected or in line with your job description/objectives
- Time wasting
- Disruptive behaviour
- Misuse of the council's facilities (e.g. telephones, computers, email, internet, vehicles or plant)
- Refusal to carry out reasonable requests or instructions
- Smoking in unauthorised areas
- Failure to follow an agreed council Procedure
- Insubordination

This list is not exhaustive and offences of a similar nature will result in disciplinary action being instigated

3.1.2 The following list provides examples of offences, which are normally regarded as **gross misconduct**:

- Theft, fraud, deliberate falsification of records, or other acts of dishonesty
- Fighting, assault on another person
- Deliberate damage to property of the council, its workers or members
- Gross incompetence in the conduct of work
- Gross negligence that results in the council or employees being put at risk.
- Being under the influence of illegal drugs or excessive alcohol
- Acts of incitement towards or actual acts of discrimination, harassment or victimisation including on the grounds of sex, race, colour, ethnic origin, disability, sexual orientation, age, religion or belief
- Serious acts of insubordination
- Serious breach of duty to keep information of the council, its service providers and its clients confidential
- Unauthorised entry to computer records
- Serious breach of the council's Security Policy, Health & Safety Policy, Confidentiality or e-mail and Internet Policy
- Any action, whether committed on or off the premises, that is likely to or does bring the council into disrepute
- Serious negligence which causes or might causes significant loss, damage or injury
- Accepting bribes or incentive payments from suppliers
- Unauthorised use of Council funds or credit
- Working with an external agency to provide information which would be detrimental to and cause commercial risk to the council.

This list is not exhaustive and other offences of a similar gravity will result in disciplinary action being instigated at Gross Misconduct level, which carries a potential penalty of dismissal. Gross Misconduct is generally any conduct that places extreme pressure on the mutual trust which exists in an employment relationship.

4. FORMS OF ACTION

4.1 INFORMAL ACTION

Minor misconduct will be dealt with informally usually in a confidential one-to-one meeting between the employee and line manager. In the case of the Town Clerk being the individual against whom there is a complaint or allegation the matter should be handled discreetly by members of the Personnel Panel and involve an informal meeting initially with the Chairman of the Panel and one other member.

Where the matter is more serious or informal action has not brought about the necessary improvement the following procedure will be used:

4.2 FORMAL ACTION

4.2.1 The level of warning you may receive for misconduct/gross misconduct will depend on how serious the council considers the alleged actions to be and your previous conduct in all the circumstances. In the event of alleged gross misconduct the formal process may commence at **Stage 4** –see 5.4 below.

4.2.2 Notification of Disciplinary Meeting

If there is a concern about an employee's conduct or behaviour then a letter will be given to the employee advising him/her of the allegation(s) and reasons why this is unacceptable. The letter will be written by the Town Clerk or Deputy Town Clerk and should invite the employee to attend a meeting at which the alleged misconduct will be discussed and will inform the employee of their right to be accompanied to the meeting. The letter will specify at which stage the disciplinary procedure is being invoked (see 5 Outcomes & Penalties) and if invoked at Stage 4 for Gross Misconduct the letter will warn that a potential outcome could be dismissal. The time, date and venue of the meeting will also be advised. Any documents to be produced at the meeting will also be provided.

4.2.3 Disciplinary Meetings

The time and location of a disciplinary meeting should be agreed with the employee and it should be held in a private location with no interruptions. This will normally be without undue delay but allowing the employee to prepare their case e.g. giving at least 5 days of the letter being sent, where practically possible. At the meeting the manager (or in the case of the Clerk being disciplined, the Chair of the Personnel Panel will state the complaint against the employee and go through the evidence which has been gathered. The employee will also be allowed to ask questions, present evidence and call witnesses if advance notice has been given that they will do so.

If the employee is unable to attend the meeting due to unforeseeable reasons out of their control (e.g. illness) then the council will reasonably rearrange the meeting. However, if the employee fails to attend the meeting without good reason the meeting can be held in the employee's absence.

5 OUTCOMES AND PENALTIES

5.1 Stage 1 - Oral Warning

In the instance of a first complaint that conduct does not meet acceptable standards, the employee will normally be given a formal ORAL WARNING. They will be advised of;

- the reason for the warning,
- that it is the first stage of the disciplinary procedure,
- the improvement that is required and the timescales for achieving this improvement.
- together with a review date and any support available (where applicable) and
- his or her right of appeal.

A brief note of the oral warning will be kept and will include the period of time after which it will be disregarded for disciplinary purposes subject to satisfactory conduct

5.2 Stage 2 - Written Warning

If the offence is a serious one, or if further to previous formal disciplinary action, a WRITTEN WARNING will be given to the employee

This will give details of the complaint, the improvement required and the timescale. It will warn that action under Stage 3 will be considered if there is no satisfactory improvement and will advise of the right of appeal. A copy of this written warning will be kept on file and will include the period of time after which it will be disregarded for disciplinary purposes subject to satisfactory conduct.

5.3 Stage 3 – Final Written Warning

If there is still a failure to improve and conduct or performance is still unsatisfactory, or the misconduct is sufficiently serious, a FINAL WRITTEN WARNING will be given to the employee.

This will give details of the complaint, will warn that dismissal will result if there is no satisfactory improvement and will advise of the right of appeal. A copy of this final written warning will be kept on file and will include the period of time after which it will be disregarded for disciplinary purposes subject to satisfactory conduct.

5.4 Stage 4 – Dismissal or other sanctions

If conduct is still unsatisfactory and the employee still fails to reach the prescribed standards, or it is reasonably concluded that Gross Misconduct has occurred, DISMISSAL may result.

The employee will be given a written statement of allegations against him/her, invited to a meeting and then be notified in writing of the reasons for the decision taken at

the hearing. Penalties at this stage may include dismissal with notice or summary dismissal (i.e. without any notice), Final Written Warning with/without demotion, loss of pay or loss of seniority. If dismissal is the outcome, the employee will be advised of the date on which employment will terminate. In all cases the employee has a right of appeal.

Very exceptionally, if an offence of Gross Misconduct is extremely serious an employee can be dismissed immediately without a meeting. In this situation a letter setting out reasons for dismissal would be sent to the employee offering the opportunity for an appeal hearing.

5.5 Other Disciplinary Penalties

These may include, for example, withholding of incremental progression or disciplinary transfer without protection of salary

6. LEVEL & AUTHORITY TO TAKE DISCIPLINARY ACTION

The list below indicates who has the authority to operate this disciplinary procedure and the level of disciplinary action they are authorised to impose

- Stage 1: Verbal Warning The Town Clerk, The Deputy Town Clerk, The Direct Services Manager, The Administration & Finance Manager
- Stage 2: Written Warning The Town Clerk or Deputy Town Clerk
- Stage 3: Final Written Warning The Town Clerk or Deputy Town Clerk in conjunction with the Chair of the Personnel Panel
- Stage 4: Dismissal The Town Clerk or Deputy Town Clerk in conjunction with the Chair of the Personnel Panel
- Other Disciplinary Sanction The Town Clerk or Deputy Town Clerk in conjunction with the Chair of the Personnel Panel

In the event that the Chair of Personnel Panel is unable to undertake their duties under the code, due to lack of availability or for some other reason, another member of the Personnel Panel will be nominated to act in their stead

Where the action is in respect of the Town Clerk, the Chair of the Personnel Panel will have the authority to initiate the procedure and the action will be escalated through a panel of that Committee with the appeal to a separate panel drawn from Councillors who have had no previous involvement.

For the purposes of this procedure in the absence of the Town Clerk the authority can be delegated to the Deputy Town Clerk. In the absence of the Deputy Town Clerk, the Chair of the Personnel Panel will undertake the role of the Town Clerk.

7. SUSPENSION

The Town Clerk or Deputy Town Clerk may suspend an employee at any time before or during the course of investigations into an employee's conduct, work or performance.

In the absence of the Town Clerk, and the Deputy Town Clerk, the Direct Services Manager and the Administration & Finance Manager are able to remove an employee from the workplace if it is felt that it would be detrimental for that person to remain. The removal from the work place must be confirmed as a suspension or the member of staff invited to return, in writing within 2 working days.

Suspension is not a disciplinary penalty. It is a step which may be taken in particular cases where the authorised manager considers it would be better for the employee not to remain on the premises while investigations are proceeding and in cases which could potentially lead to dismissal, i.e., in cases of gross misconduct.

Suspension will be for as short a period as possible. A suspended employee will receive full pay during the period of suspension.

Oral suspension will be confirmed in writing within 2 working days. The suspension letter should give the reasons for the suspension and set out any special terms

A suspended employee remains an employee of the Town Council and must be available for interview at any time during normal working hours.

8. TIME LIMITS – WARNINGS

Warnings will be in force or 'live' for specific periods of time and these will be dependent on individual circumstances. The sorts of time period appropriate are:

- Oral Warning 6 months
- Written Warnings 6 - 12 months, in exceptional circumstance may be extended
- Final Written Warnings 1 - 2 years, in exceptional circumstances may be extended

Warnings will cease to be 'live' at the end of the specified time period and will be disregarded for any future disciplinary purposes. However, as these warnings form part of the individual's disciplinary and employment record with the Council, they will remain within their personal file.

Exceptionally, there may be times where the misconduct is so serious that a Final Written Warning may not realistically be disregarded for future disciplinary purposes. In such cases it will be made very clear, that the warning may never be removed and that any re-occurrence or further disciplinary action may lead to dismissal

9. APPEALS

The Appeals stage of the disciplinary process can be exercised after any of the stages of disciplinary action for Misconduct/Poor Performance or Gross Misconduct.

Next formal review date – June 2021

An employee has a right of appeal against a warning or a dismissal.

An appeal against dismissal or a warning, will be to a panel appointed from the membership of Personnel Panel

The appeal panel will contain no individual who has previously been involved in the case – for example if the Chair of Personnel Panel has been involved in a dismissal or Final Written Warning decision, then it would not be appropriate for that individual to be involved in hearing any appeal.

Any appeal must be made in writing by the employee, stating the reasons why they are appealing and it must be lodged within 10 working days of the date of the original decision being notified in writing.

An Appeal may be raised if:

- The employee thinks the finding or penalty is unfair
- New evidence has come to light
- The employee thinks that the procedure was not applied properly

The appeal will follow the same format at the original Hearing and a decision will be notified within 3 working days of the appeal Hearing.

In the case of the Town Clerk an appeals panel will be convened from Members not involved in the Disciplinary Hearing

At the Appeal hearing any disciplinary penalty imposed will be reviewed but it cannot be increased. The decision taken at the Appeal hearing will be final.

10. THE RIGHT TO BE ACCOMPANIED

At any formal stage of the procedure an employee may be accompanied by a fellow employee of their choice or their trade union representative or official of a trade union (appropriately accredited) but as this is an internal procedure they will not be entitled to be accompanied by any external supporter e.g. partner, parent, solicitor etc. This right to be accompanied is enshrined in the Employment Relations Act 1999. To exercise this right the employee should make a reasonable request. The companion will be allowed to address the hearing, put and sum up the employee's case, respond to views expressed at the hearing and to confer with the employee during the hearing (sometimes in an adjournment) but is not allowed to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case.

11. GRIEVANCES RAISED DURING DISCIPLINARIES

In some circumstances when a disciplinary process has commenced an employee chooses to exercise his/her right to raise an internal grievance about the employment relationship with the council or individual Members. Normally in these circumstances the disciplinary matters are placed on hold until grievances have been

aired and actions towards a resolution have been progressed. In exceptional circumstances it is pragmatic to deal with the two disputes concurrently but specialist advice should be sought if this arises.

12. CRIMINAL CHARGES OR CONVICTIONS

If an employee is charged with or convicted of a criminal offence this does not automatically give rise to a disciplinary situation. Consideration needs to be given to how a charge or conviction may affect an employee's ability to undertake his or her job duties and their relationships with the employer, colleagues, subordinates or customers.

13. INVESTIGATIONS

Where a situation occurs which may appear to be a breach of discipline, the Town Clerk or Deputy Town Clerk will usually need to ascertain the facts of the matter by arranging for a preliminary investigation to be conducted. In the event that an investigation is required, the Town Clerk or Deputy Town Clerk will need to appoint someone to investigate.

The Town Clerk will normally appoint either the Deputy Town Clerk, the Direct Services Manager or the Administration & Finance Manager or Human Resources staff as the investigating officer.

The purpose of the investigation is to establish the facts promptly. It may involve interviewing the person concerned or obtaining statements from relevant witnesses. Following the preliminary investigation the authorised manager will determine whether or not a disciplinary hearing should be convened.

14. THE PROCEDURE IN OPERATION:

When convening a hearing, the procedure will be as follows, unless varied with the consent of all parties:

- a) The employee will be informed, in writing, giving at least 5 working days notice, that they are required to attend a disciplinary hearing. The employee is entitled to know in advance (in writing), the complaint against them and to have access to any relevant documents, so that they can prepare a proper response. The employee should also be informed of their right to be accompanied, to bring their own witnesses and to produce documentary evidence in support of their case.
- b) The employee will be advised that, should they fail to attend the hearing, without good cause or reason, then the Town Clerk or Deputy Town Clerk may proceed with the hearing, in their absence, and make a decision on whether disciplinary action is appropriate.
- c) During the hearing, both the employee (and their representative) and the investigating officer on behalf of the Town Council, will have the opportunity to put their respective cases, supported by witnesses as appropriate. The investigating officer will normally present their case first. The employee will

then be given the opportunity to state their case. Both parties are entitled to ask questions of the other or question any witnesses.

- d) The Town Clerk or Deputy Town Clerk hearing the case is entitled to ask questions of both parties and witnesses. Both the investigating officer and the employee will be asked to sum up their cases. Once the Town Clerk or Deputy Town Clerk is satisfied that all the facts of the matter have been presented the hearing will be adjourned to consider all of those facts and the meeting re-convened at a later time or date.
- e) The Town Clerk or Deputy Town Clerk will then decide if formal disciplinary action is appropriate bearing in mind any current warnings, past record, length of service, mitigating circumstances and previous work performance of the individual.
- f) The Town Clerk or Deputy Town Clerk will inform the employee of the decision of the Hearing in writing within 3 working days. The letter should clearly state: any disciplinary action decided upon; the time period over which the sanction will apply; any expected improvement in conduct required and assistance that will be provided to achieve this. It should also detail the consequences for the employee, should they fail to improve or further if breaches in discipline occur.