

 **Disciplinary Policy**

**Introduction**

1. This policy is based on and complies with the 2015 ACAS Code of Practice (<http://www.acas.org.uk/index.aspx?articleid=2174>) It also takes account of the ACAS guide on discipline and grievances at work.

<https://www.acas.org.uk/media/1043/Discipline-and-grievances-at-work-The-Acas-guide/pdf/DG_Guide_Feb_2019.pdf>

The policy is designed to help Council employees improve unsatisfactory conduct and performance in their job. Wherever possible, the Council will try to resolve its concerns about employees’ behaviour informally, without starting the formal procedure set out below.

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

3. This policy confirms:

* Informal coaching and supervision will be considered, where appropriate, to improve conduct and/or attendance
* the Council will fully investigate the facts of each case
* the Council recognises that misconduct and unsatisfactory work performance are different issues. The disciplinary policy will also apply to work performance issues to ensure that all 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 ACAS “Performance Management” at <https://www.acas.org.uk/index.aspx?articleid=6608>
* employees will be informed, in writing, about the nature of the complaint against them and given the opportunity to state their case
* employees will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary hearing

* employees may be accompanied or represented by a companion, a workplace colleague, a trade union representative or a trade union official, at any investigatory, disciplinary or appeal meeting. 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 their 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 submissions
* 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 unless it is unreasonable not to propose a later date
* any changes to specified time limits in the Council’s procedure must be agreed by the employee and the Council
* information about an employee’s disciplinary matter will be restricted to those involved in the disciplinary process. A record of the reason for disciplinary action and the action taken by the Council is confidential to the employee. The employee’s disciplinary record will be held by the Council in accordance with the General Data Protection Regulation (GDPR)
* audio or video recordings of the proceedings at any stage of the disciplinary procedure are prohibited, unless agreed by all affected parties as a reasonable adjustment that takes account of an employee’s medical condition
* employees have the right to appeal against any disciplinary decision. The appeal decision is final
* if an employee who is already subject to the Council’s disciplinary procedure raises a grievance, the grievance will normally be heard after the completion of the disciplinary procedure
* disciplinary action taken by the Council can include a verbal warning, written warning, final written warning or dismissal
* this procedure may be implemented at any stage if the employee’s alleged misconduct warrants this
* 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 a 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
* the Council may consider mediation at any stage of the disciplinary procedure where appropriate (for example where there has been communication breakdowns or allegations of bullying or harassment). Mediation is a dispute resolution process that requires the consent of affected parties

**Examples of Misconduct**

4. Misconduct is employee behaviour that can lead to the employer taking disciplinary action. The following list contains some examples of misconduct. The list is not exhaustive:

* unauthorised absence
* poor timekeeping
* misuse of the Council’s resources and facilities including telephone, email and internet
* inappropriate behaviour
* refusal to follow reasonable instructions
* breach of health and safety rules

**Examples of Gross Misconduct**

5. 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. The list is not exhaustive:

* bullying, discrimination and harassment
* incapacity at work because of alcohol or drugs
* violent behaviour
* fraud or theft
* gross negligence
* gross insubordination
* serious breaches of council policies and procedures e.g. the Health & Safety Policy, Equality & Diversity Policy, Data Protection Policy and any policies regarding the use of information and technology
* serious and deliberate damage to property
* use of the internet or email to access pornographic, obscene or offensive material disclosure of confidential information

 **Examples of Unsatisfactory Work Performance**

6. The following list contains some examples of unsatisfactory work performance. The list is not exhaustive:

* inadequate application of management instructions/office procedures
* inadequate IT skills
* unsatisfactory management of staff
* unsatisfactory communication skills

Wherever reasonable, unsatisfactory work performance should be managed through normal line-management and performance management processes prior to taking any disciplinary action. This should enable any training, mentoring or coaching requirements to be identified and put in place. Disciplinary action for unsatisfactory work performance will normally only be instigated if this does not result in the required improvement.

**Suspension**

7. If allegations of gross misconduct or serious misconduct are made, the Council may suspend the employee while further investigations are carried out. Suspension will be on full pay. Suspension does not imply any determination of guilt or innocence, as it is merely a measure to enable further investigation.

8. While on suspension, the employee is required to be available during the normal hours of work in the event that the Town Clerk needs to make contact. The employee must not contact or attempt to contact or influence anyone connected with the investigation in any way or to discuss this matter with any other employee or Councillor.

9. The employee must not attend work. The Town Clerk will make arrangements for the employee to access any information or documents required to respond to any allegations.

**N.B. The following applies to all employees except the Town Clerk. If the Town Clerk is the subject of the disciplinaryrefer to Appendix A**

**The Procedure**

10. **Preliminary enquiries**. The Town Clerk may make preliminary enquiries to establish the basic facts of what has happened in order to understand whether there may be a case to answer under the disciplinary procedure.

If the employee’s line manager believes there may be a disciplinary case to answer, the Town Clerk may initiate a more detailed investigation undertaken to establish the facts of a situation or to establish the perspective of others who may have witnessed misconduct.

11. **Informal procedures**. Where minor concerns about conduct become apparent, it is the line manager’s responsibility to raise this with the employee and clarify the improvements required. A file note will be made and kept by the line manager. The informal discussions are not part of the formal disciplinary procedure. If the conduct fails to improve, or if further matters of conduct become apparent, the line manager may decide to formalise the discussions and invite the employee to a first stage disciplinary hearing.

**Disciplinary Investigation**

12. A formal disciplinary investigation may sometimes be required to establish the facts and whether there is a disciplinary case to answer.

13. If a formal disciplinary investigation is required, the Town Clerk will, so far as reasonably practicable, appoint the Finance Manager, or an independent person (the Investigator), to undertake a fact-finding exercise to collect all relevant information (investigation). The Investigator should provide a written report and include in the report the following:

* the details of the investigation
* the process of the investigation
* the findings of the investigation
* a conclusion - If a recommendation is required and if so, what the recommendation is
* further recommendations
* list of supporting documents

14. The Investigator will conclude a report within 20 working days where possible. In cases of alleged unsatisfactory performance or of allegations of minor misconduct, the Town Clerk may decide an investigation is not necessary and to commence disciplinary proceedings at the next stage – the disciplinary hearing.

15. The Town Clerk will notify the employee in writing of the alleged misconduct. The employee may be asked to a meeting with the Town Clerk. The employee will be given at least five days’ notice of the meeting with the Town Clerk so that they has reasonable time to prepare for it. The letter will explain the investigatory process and that the meeting is part of that process. The employee will be provided with a copy of the Council’s disciplinary procedure. The Town Clerk will also inform the employee that at the meeting they will have the opportunity to comment on allegations of misconduct.

16. Employees may be accompanied or represented by a workplace colleague, a trade union representative or a trade union official at any investigatory meeting.

17. If there are other persons (e.g. employees, Councillors, members of the public or the Council’s contractors) who can provide relevant information, the Investigator should try to obtain it from them in advance of the meeting with the employee.

18. The Investigator’s report will contain their recommendations and the findings on which they were based. They 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 a formal hearing should be convened under the Council’s disciplinary procedure

19. At the end of the investigation the Town Clerk will decide whether it is necessary to proceed with disciplinary action in which case the employee will be invited to a disciplinary hearing.

20. If the Town Clerk decides that they will not take disciplinary action, they may consider whether mediation would be appropriate in the circumstances

**The Disciplinary Hearing**

21. If the Town Clerk decides there is a case to answer, they will write to the employee. The letter will confirm the following:

* details of the alleged misconduct, its possible consequences and the employee’s statutory right to be accompanied at the hearing
* any supporting evidence and a copy of the council’s disciplinary policy and procedure
* 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
* that witnesses may attend on the employee’s and the council’s behalf and that both parties should inform each other of their witnesses’ names at least two working days before the meeting
* that the employee may be accompanied by a companion – a workplace colleague, a trade union representative or a trade union official

The purpose of the disciplinary hearing is for the allegations to be put to the employee and then for the employee to give their perspective. It will be conducted as follows:

* the Town Clerk will introduce themself and explain the arrangements for the hearing
* the Town Clerk will set out the allegations and present the findings of the investigation report
* the Town Clerk will invite the employee to present their account
* the employee (or the companion) will set out their case and present evidence (including any witnesses and/or witness statements)
* the Town Clerk and the employee (or the companion) may question any witness
* the employee (or companion) will have the opportunity to sum up

22. The Town Clerk will provide the employee their decision with reasons, in writing, within five working days of the meeting. The Town Clerk will also notify the employee of the right to appeal the decision.

23. The disciplinary hearing may be adjourned to allow matters that were raised during the meeting to be further investigated by the Town Clerk.

**Disciplinary Action**

24. If the Town Clerk decides that there should be disciplinary action, they may apply any of the following warnings.

 **Informal Warning**

An informal warning is issued for most first instances of minor misconduct. The Town Clerk 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
* of the right to appeal
* that a note confirming the informal 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 for six months

**First Written Warning**

If there is a repetition of earlier misconduct which resulted in a verbal warning, or for different and more serious misconduct, the employee will normally be given a written warning. A first written warning will set out:

* the reason for the 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
* the employee’s right to appeal
* that a note confirming the written 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 for a specified period of time no less than 12 months.

**Final Written Warning**

If the offence is sufficiently serious, or if there is further misconduct or a failure to improve sufficiently during the currency of a prior warning, 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 tie 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 a note confirming the final written 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 for a specified period of time no less than 15 months

25. If the Town Clerk decides to take no disciplinary action, no record of the matter will be retained on the employee’s personnel file.

Action taken as a result of the disciplinary meeting will remain in force unless it is modified as a result of an appeal.

26. **Any** allegations of **more serious misconduct**, **or where a previous Final Warning has been given** but the required improvement has not been made, should immediately be referred to the Chair of the Finance & Staffing Committee, or in their absence, the Vice-Chair of the Finance & Staffing Committee.

The Finance & Staffing Committee should follow the procedure in Appendix A, the Disciplinary Hearing. If the Finance & Staffing Committee decides that there should be disciplinary action it may choose dismissal.

**Dismissal**

The sanction dismissal can **ONLY** be applied by a panel made up of 3 members of the Finance & Staffing Committee.

The panel may dismiss:

* for gross misconduct
* if there is no improvement with 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

27. The panel 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 the details of their right of appeal.

If the panel decides to take no disciplinary action, no record of the matter will be retained on the employee’s personnel file.

Action taken as a result of the disciplinary hearing will remain in force unless it is modified as a result of an appeal.

**The Appeal**

28. 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 Chair of the Finance & Staffing committee, or in their absence, the Vice-Chair of the Finance & Staffing committee, within five working days of the employee receiving written notice of the disciplinary action and must specify the grounds for appeal.

29. The grounds of appeal include;

* a failure by the Council to follow its disciplinary policy
* the Town Clerk’s disciplinary decision was not supported by the evidence
* the disciplinary action was too severe in the circumstances of the case
* new evidence has come to light since the disciplinary meeting.

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

31. The employee will be notified, in writing, within ten working days of receipt of the notice of appeal of the time, date 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 trade union official.

32. At the appeal meeting, the Chair will:

* introduce the panel members to the employee
* explain the purpose of the meeting, which is to hear the employee’s reasons for appealing against the disciplinary decision
* explain the action that the appeal panel may take

33. The employee (or companion) will be asked to explain the grounds for appeal.

34. The Chair will inform the employee that they will receive the decision and the panel’s reasons, in writing, usually within five working days of the appeal hearing.

35. The appeal panel may decide to uphold the disciplinary decision of the Town Clerk, 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.

36. 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.

37. The appeal panel’s decision is final.

**Appendix A – When the Town Clerk is under investigation OR when an allegation of more serious misconduct by any other employees**

**The Procedure**

A1. Preliminary enquiries. The council may appoint a member to make preliminary enquiries to establish the basic facts of what has happened in order to understand whether there may be a case to answer under the disciplinary procedure.

 If the initial enquiries indicate there may be a disciplinary case to answer, the council may initiate a more detailed investigation to establish the facts of a situation or to establish the perspective of others who have witnessed misconduct.

A2. Informal procedures. Where minor concerns about conduct become apparent, it is the Chair of the Council to raise this with the Town Clerk and clarify the improvements required. A file note will be made and kept by the Chair of Council. The informal discussions are not part of the formal disciplinary procedure. If the conduct fails to improve, or if further matters of conduct become apparent, the Chair of Council may decide to formalise the discussion and invite the Town Clerk to a first stage disciplinary meeting.

**Disciplinary investigation**

A3. A formal disciplinary investigation may sometimes be required to established the facts and whether there is a disciplinary case to answer

A4. If a formal disciplinary investigation is required, the Council’s Finance & Staffing committee will appoint an Investigator who will be responsible for undertaking a fact finding exercise to collect all relevant information. The Investigator will be independent and will normally be a councillor. If the Finance & Staffing committee considers that there are no councillors who are independent (for example, because panel all have direct involvement in the allegations about the Town Clerk), it will appoint someone from outside the Council. The Investigator will be appointed as soon as possible after the allegations have been made. The Finance & Staffing committee will inform the Investigator of the terms of reference of the investigation. The terms of reference should specify:

* the allegations or events that 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 written report
* who the findings should be reported to and who to contact for further direction if unexpected issues arise or advice is needed.

A5. The Investigator will be asked to submit their findings within 20 working days of appointment where possible to the Chair of the Finance & Staffing committee, or in their absence, the Vice-Chair of the Finance & Staffing committee. In cases of alleged unsatisfactory performance or of allegations of minor misconduct, the appointment of an investigator may not be necessary and the Council may decide to commence disciplinary proceedings at the next stage – the Disciplinary Hearing.

A6. The Chair of the Finance & Staffing committee, or in their absence, the Vice-Chair of the Finance & Staffing committee, will notify the Town Clerk in writing of the alleged misconduct and details of the person undertaking the investigation. The Town Clerk may be asked to meet an investigator as part of the disciplinary investigation. The Town Clerk will be given sufficient notice of the meeting with the Investigator so that they has reasonable time to prepare for it. The letter will explain the investigatory process and that the meeting is part of it. The Town Clerk will be provided with a copy of the Council’s disciplinary policy and procedure. The Council will also inform the Town Clerk that when they meets with the Investigator, he /she will have the opportunity to comment on the allegations of misconduct.

A7. The Town Clerk may be accompanied or represented by a workplace colleague, a trade union representative or a trade union official at any investigatory meeting.

A8. If there are other persons (e.g. employees, councillors, members of the public or the Council’s contractors) who can provide relevant information, the Investigator should try to obtain it from them in advance of the meeting with the Town Clerk.

A9. The Investigator has no authority to take disciplinary action. Their role is to establish the facts of the case as quickly as possible and prepare a report that recommends to the Finance & Staffing committee whether or not disciplinary action should be considered under the policy.

A10. The Investigator’s report will contain their recommendations and the findings on which panel were based. They will recommend either:

* the Town Clerk 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 Town Clerk has a case to answer and a formal hearing should be convened under the Council’s disciplinary procedure

If the Investigator’s report concludes the Town Clerk has a case to answer the Chair of the Finance & Staffing Committee, or in their absence, the Vice-Chair of the Finance & Staffing committee should call an Extraordinary Meeting of the Finance & Staffing committee to discuss the findings of the report.

**The Disciplinary Hearing**

A11. If the Finance & Staffing committee decides that there is a case to answer, it will appoint a panel of three councillors, to formally hear the allegations. The panel will appoint a Chair from one of its members. The Investigator shall not sit on the panel.

A12. 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 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 Town Clerk’s statutory right to be accompanied at the hearing
* a copy of the information provided to the panel which may include the investigation report, supporting evidence and a copy of the Council’s disciplinary procedure
* the time and place for the meeting. The Town Clerk will be given reasonable notice of the hearing so that they has sufficient time to prepare for it
* that witnesses may attend on the employee’s and the Council’s behalf and that both parties should inform each other of their witnesses’ names at least two working days before the hearing
* that the Town Clerk may be accompanied by a companion – a workplace colleague, a trade union representative or a trade union official

The purpose of the disciplinary hearing is for the allegations to be put to the employee and for the employee to give their perspective. It will be conducted as follows:

* the Chair will introduce the members of the panel to the employee and explain the arrangements for the hearing
* the Chair will set out the allegations and invite the Investigator to present the findings of the investigation report (if there has been a previous investigation)
* the Chair will invite the employee to present their account
* the employee (or their companion) will set out their case and present evidence (including any witnesses and or witness statements)
* any member of the panel and the employee (or their companion) may question the Investigator and any witness
* the employee (or companion) will have the opportunity to sum up

A13. The Chair will provide the Town Clerk with the panel’s decision with reasons, in writing, within five working days of the hearing. The Chair will also notify the Town Clerk of the right to appeal the decision.

A14. The disciplinary hearing may be adjourned to allow matters that were raised during the hearing to be further investigated by the panel.

**Disciplinary Action**

If the panel decides that there should be disciplinary action, it may be any of the sanctions as detailed in the main policy under Disciplinary Actions, including dismissal.

**The Appeal Procedure.**

A15. The employee will be notified of the right to appeal. Their written notice of appeal must be received by the Chair of Finance & Staffing, or in their absence, the Vice-Chair of the Finance & Staffing committee within five working days of the employee receiving written notice of the disciplinary action and must specify the grounds for appeal.

A16. The grounds for appeal include:

* a failure by the council to follow its disciplinary policy
* the panel’s disciplinary decision was not supported by the evidence
* the disciplinary action was too severe in the circumstances of the case
* new evidence has come to light since the disciplinary meeting

A17. Where possible, the appeal will be heard by a panel of three members of the Finance & Staffing committee who have not previously been involved in the case. This includes the Investigator. There may be insufficient members of the Finance & 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 Finance & Staffing committee. The appeal panel will appoint a Chair form one of its members.

A18. The employee will be notified, in writing, within ten working days of receipt of the notice of appeal of the time, date and place of the appeal hearing. The employee will be advised that they may be accompanied by a companion – a workplace colleague, a trade union representative or a trade union official.

A19. At the appeal hearing, the Chair will

* introduce the panel members to the employee
* explain the purpose of the hearing, which is to hear the employee’s reasons for appealing against the disciplinary decision
* explain the action that the appeal panel may take.

A20. The employee (or companion) will be asked to explain the grounds of appeal.

A21. The Chair will inform the employee that they will receive the decision and the panel’s reasons, in writing, usually within five working days of the appeal hearing.

A22. The appeal panel may decide to uphold the disciplinary decision of the staffing committee, substitute a less serious sanction or decide that no disciplinary action is necessary, no record of the matter will be retained on the employee’s personnel file.

A23. 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.

A24. The appeal panel’s decision is final.

|  |  |
| --- | --- |
| Date of Approval | 24 May 2021 |
| Latest date of next Review | May 2024 |
| Cross Reference Documents | Grievance Policy |