

POLICY TITLE

Disciplinary Procedure

REVISION DATE

September 2020

REPLACES POLICY

May 2018

POLICY AIM

The aims of this disciplinary procedure are to:

- allow the Council to set standards of performance and behaviour
- make sure that employees are treated fairly and consistently when dealing with shortfalls
- help maintain and improve standards
- provide a means of deciding when dismissal is justified. Dismissal is the last resort when all else has failed or when the employee's breach is a very serious one
- comply with legislation as part of the Employment Acts 2008 and 2010 and be consistent with ACAS Code of Practice relating to Discipline and Grievance.

EXECUTIVE SUMMARY

The main points of this policy are:

- when the Council is considering taking disciplinary action against an employee, there is a Code of Practice to follow
- the Line Manager has to write to the employee giving reasons of why they are considering taking disciplinary action and invite the employee to a meeting to discuss the matter
- the employee has a right to be accompanied at the meeting
- an employee has a right of appeal against the disciplinary action

WHO IS AFFECTED BY THE POLICY?

This policy applies to all employees of Skegness Town Council.

POLICY STATEMENT

Skegness Town Council recognises the value of its staff and aims to put policies in place to ensure that they are treated fairly and consistently.

INFORMAL PROCEDURE

Cases of minor misconduct or unsatisfactory performance are usually best dealt with informally. An informal conversation or quiet word is often all that is required to nip the problem in the bud and improve an employee's conduct or performance. In some cases,

additional training, coaching and advice may be what is needed. There will be situations where matters are more serious or where an informal approach has been tried but is not working.

If informal action does not bring about an improvement, or the misconduct or unsatisfactory performance is considered too serious to be classed as minor, employers should provide employees with a clear signal of their dissatisfaction by taking formal action.

How should it be done?

- Talk to the employee in private. This should be a two-way discussion, aimed at discussing possible shortcomings in conduct or performance and encouraging improvement. Criticism should be constructive, with the emphasis being on finding ways for the employee to improve and for the improvement to be sustained.
- Listen to whatever the employee has to say about the issue. It may become evident there is no problem – if so make this clear to the employee.
- Where improvement is required make sure the employee understands what needs to be done, how their performance and conduct will be reviewed, and over what period. It may be useful to confirm in writing what has been decided.
- Be careful that any informal action does not turn into formal disciplinary action.
- Keep brief notes of any agreed informal action for reference purposes. There should be reviews of progress over specified periods.
- Consider at any stage whether the use of an independent mediator may be helpful.

Using Mediation

There are no hard and fast rules for when mediation is appropriate but it can be used:

- For conflict involving colleagues of a similar job or grade, or between a line manager and their staff.
- To address a range of issues, including work relationship breakdown, personality clashes, communication problems, bullying and harassment.

Cases un-suitable for mediation:

- Used as a first resort. People should be encouraged to speak to each other and talk to their manager before they seek a solution via mediation.
- A decision about right or wrong is needed (i.e. criminal activity)
- The parties do not have the power to settle the issue.
- One side is completely intransigent and using mediation will only raise unrealistic expectations of a positive outcome.

FORMAL PROCEDURE

Examples of when disciplinary action could be taken are:

- poor conduct (i.e. drunkenness or fighting)
- misuse of facilities (i.e. internet and email)
- poor timekeeping
- unauthorised absence
- repeated or serious failure to follow instructions
- poor attendance

- poor health and safety

The Council will always seek to resolve disciplinary and grievance issues in the workplace. Where this is not possible, the Council and its employees will consider using an independent third party to help resolve the problem.

When a potential disciplinary matter arises, someone will be appointed to establish the facts of the case, take statements from witnesses and hold an investigatory meeting with the employee (please note, that it should be made clear to the employee involved that this is not a disciplinary meeting and that they may be accompanied if they wish by a person of their choosing). It is important to keep a written record of the investigation for later reference. The following will undertake the investigation:

- Staff other than the Town Clerk or Deputy Town Clerk – The Deputy Town Clerk
- Deputy Town Clerk – The Town Clerk
- Town Clerk – The Chairman of the HR Committee

Having established the facts, the person undertaken the investigation should decide whether there is a case for the employee to answer or not. If, following investigation, formal disciplinary action appears to be necessary the person who conducted the investigation should hand the investigation file to the Town Clerk in respect of staff generally and to the HR Committee in respect of the Town Clerk and Deputy Town Clerk.

Where potential disciplinary action is to be taken against the Town Clerk or Deputy Town Clerk this must be approved by Council beforehand.

In certain cases, for example, in cases of gross misconduct, where relationships have broken down or there are risks to property or people, the employee may be suspended on full pay. Please refer to the suspension policy for full details of the procedure.

The person conducting the disciplinary hearing will write to the employee and include:

- what it is they are alleged to have done wrong and briefly why this is not acceptable.
- a request for them to attend a meeting at which the issue can be discussed – allowing at least 3 working days notice.
- Details of the date, time and venue of the meeting.
- a statement making them aware that they have a right to be accompanied by a trade union official or a person of their choice.
- Copies of any written evidence, which may include witness statements.
- Contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting.

The employee will be at liberty to provide a copy of these documents to any person who may be accompanying them at the disciplinary meeting.

If disciplinary action is considered against a trade union representative, the case should be discussed, after obtaining the employee's agreement, with a senior trade union representative or permanent union official (region).

If the employee or the person who is accompanying them is unable to make the proposed date, another meeting should be arranged within 5 working days.

Preparing for the meeting

- arrange a time for the meeting, which should be held as privately as possible, in a suitable room, and where there will be no interruptions.
- make provision for any reasonable adjustments to accommodate the specific needs of the person.
- ensure that all the relevant facts are available, such as disciplinary records and any other relevant documents (i.e. absence or sickness records) and, where appropriate, written statements from witnesses.

The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case. The person conducting the meeting will explain the complaint against the employee and go through the evidence that has been gathered. Remember that the point of the disciplinary meeting is to establish the facts, not to catch people out.

The employee will then be given the opportunity to state their case and answer any allegations that have been made. The employee will also be allowed to ask questions, present evidence, call relevant witnesses and be given an opportunity to raise points about any information provided by witnesses. Where an employer or employee intends to call relevant witness they should give advance notice that they intend to do this. Any person accompanying the employee will be able to fully participate in the meeting, for example by addressing the hearing, but not answer questions on behalf of the employee. If new facts emerge, it may be necessary to adjourn the meeting to investigate them and reconvene the meeting when this has been done.

Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently.

General questioning and discussion advice:

- Use this stage to establish all the facts.
- Ask the employee if they have any explanation for the alleged misconduct or unsatisfactory performance, or if there are any special circumstances to be taken into account.
- If it becomes clear during this stage that the employee has provided an adequate explanation or there is no real evidence to support the allegation, bring the proceedings to a close.
- Keep the approach formal and polite and encourage the employee to speak freely with a view to establishing the facts. A properly conducted disciplinary meeting should be a two way process. Use questions to clarify the issues and to check that what has been said is understood. Ask open-ended questions to get the broad picture. Ask precise, closed questions requiring a yes/no answer only when specific information is needed.
- Do not get involved in arguments and do not make personal or humiliating remarks.
- Avoid physical contact or gestures.

- It is possible that the disciplinary meeting may not proceed smoothly – people may be upset or angry. If the employee becomes upset or distressed allow time for them to regain composure before continuing.
- Clearly during the meeting there may be some ‘letting off steam’, and this can be helpful in finding out what has actually happened. Please note, abusive language or conduct should not be tolerated.

What if an employee repeatedly fails to attend a meeting?

There may be occasions when an employee is repeatedly unable or unwilling to attend a meeting. This may be for various reasons, including genuine illness or unwilling to attend a meeting. Employers will need to consider all the facts and come to a reasonable decision on how to proceed. Where an employee continues to be unavailable to attend a meeting the employer may conclude that a decision will be made on the evidence available. The employee should be informed where this is to be the case.

Following the meeting, the person conducting the meeting (or Committee) should decide whether or not disciplinary or any other action is justified. Account should be taken of the following when making their decision:

- Whether the rules of the organisation indicate what the likely penalty will be as a result of the particular misconduct.
- The penalty imposed in similar cases in the past.
- Whether standards of other employees are acceptable, and that this employee is not being unfairly singled out.
- The employee’s disciplinary record (including current warnings), general work record, work experience, position and length of service.
- Any special circumstances which might make it appropriate to adjust the severity of the penalty.
- Whether any training, additional support or adjustments to the work are necessary.

Reconvene the meeting and inform the employee of the decision, how the decision was made and read out the content of the written confirmation of the action that has been decided upon. Explain to the employee their right to appeal against the decision.

Write to the employee to confirm the outcome of the meeting.

After a decision has been made all background papers should be placed on the employee’s personal file.

Formal disciplinary action includes:

a) Written warning - Unsatisfactory Performance

If cases of unsatisfactory performance an employee should be given an ‘improvement note’, setting out:

- the performance problem.
- the improvement that is required.
- the timescale for achieving this improvement.
- a review date.

- any support, including any training, that the employer will provide to assist the employee.

The employee should be informed that the note represents the first stage of a formal procedure and is equivalent to a first written warning and that failure to improve could lead to final written warning and ultimately dismissal.

b) Written warning - Misconduct

If a written warning is deemed necessary the Town Clerk (or Disciplinary Committee Chairman) must write to the employee, referring to the meeting, and include:

- the nature of the misconduct and why this is not acceptable
- the level of improvement required
- the date by which it is to be achieved
- a statement making the employee aware that this written warning is part of the formal disciplinary process and that if there is a re-occurrence of the issues raised or not sufficient improvement, this could result in a final written warning and ultimately dismissal
- reference to the fact that this warning will remain in force for 12 months and can be extended if needed
- information about the right to appeal that they have against the decision (as outlined in this procedure).

The copy of the letter should be placed on the employee's personal file.

c) Final written warning

If the issues which resulted in a written warning do not improve sufficiently or re-occur, or, where the first offence is considered serious, the employee should be issued with a final written warning. The Town Clerk (or Disciplinary Committee Chairman) should write to the employee, referring to the meeting and include:

- the nature of the misconduct and why this is not acceptable
- the level of improvement required
- the date by which it is to be achieved
- a statement making the employee aware that this written warning is part of the formal disciplinary process and that if there is a re-occurrence of the issues raised or not sufficient improvement, this could result in dismissal
- reference to the fact that this warning will remain in force for 12 months and can be extended if needed
- information about the right to appeal that they have against the decision (as outlined in this procedure).

The copy of the letter should be placed on the employee's personal file.

d) Action short of dismissal

If the employee has received a final written warning and there have not been sufficient improvements, other actions short of dismissal may be taken. These include demotion, withholding promotions, loss of increment or the employee paying for any damage done. These measures may be permanent or temporary depending on the circumstances.

e) Dismissal with notice following previous warnings

When all options have failed, dismissal with notice or payment in lieu of notice may be necessary. Dismissal must be reasonable in all the circumstances of the case. Unless the employee is being dismissed for reasons of gross misconduct, he or she should receive the appropriate period of notice or payment in lieu of notice.

The Town Clerk has authority to dismiss in respect of non-direct reports
Only Full Council has the authority to dismiss the Town Clerk and those reporting directly to the Town Clerk.

f) Dismissal without notice for gross misconduct

Gross misconduct is generally seen as misconduct serious enough to overturn the contract between the employer and the employee thus justifying summary dismissal. In cases of gross misconduct, the Council may consider dismissing the employee even though they haven't already received a written warning or a final written warning.

Only Full Council has the authority to dismiss.

Examples of gross misconduct might include:

- theft or fraud.
- physical violence or bullying.
- deliberate and serious damage to property.
- serious misuse of an organisation's property or name.
- deliberately accessing internet sites containing pornographic, offensive or obscene material.
- serious insubordination.
- unlawful discrimination or harassment.
- bringing the organisation into serious disrepute.
- serious incapability at work brought on by alcohol or illegal drugs.
- causing loss, damage or injury through serious negligence.
- a serious breach of health and safety rules.
- a serious breach of confidence.

The list is neither exclusive nor exhaustive and in addition there may be other offences which would constitute gross misconduct.

Dealing with special cases

If an employee is charged with, or convicted of a criminal offence this is not normally in itself reason for disciplinary action. Consideration needs to be given to what effect the charge or conviction has on the employee's suitability to do the job and their relationship with their employer, work colleagues and customers. An employee should not be dismissed or otherwise disciplined solely because he or she has been charged with or convicted of a criminal offence.

The Appeal Procedure

Employees who have had disciplinary action taken against them have the right to appeal. An employee may choose to appeal, for example, because:

- they think the decision made was unfair
- new evidence comes to light
- they think the disciplinary procedure wasn't followed correctly.

If the employee wishes to appeal against the decision, they should write to the Town Clerk (or in the case of the Town Clerk the Mayor) stating their grounds for appeal. This should be done within seven calendar days of receiving the notification. The Town Clerk will then convene a meeting of the Appeals Committee, consisting of not less than 7 Members of Council who were not involved in the disciplinary meeting.

The Committee hearing the appeal should read all the notes relating to the case and contact the employee to invite them to an appeal meeting. This meeting should be held within 14 days from receiving the letter of appeal or if not possible within a timescale agreed with the employee. The employee should be informed that they have a right to be accompanied by a trade union official or a person of their choice.

Within 7 calendar days of the appeal hearing, the Committee hearing the appeal should respond to the employee in writing and notify them of their decision. The decision will be final.

Any letters or documents relating to the case should be placed on the employee's personal file.

Equality

As an employee of Skegness Town Council if you feel that this policy or function has a negative impact on you as an individual and / or you are unable to access this policy or function for any reason please contact the Town Clerk. Skegness Town Council is committed to promoting equality and eliminating discrimination on the grounds of gender, sexual orientation, gender reassignment, marital or civil partnership status, religious belief, race, disability and / or age.

POLICY APPROVAL

Approved by Council on 7th October 2022.

POLICY REVIEW

This policy is to be reviewed at least every 2 years, next due October 2020.