

South Kirkby and Moorthorpe Town Council



Disciplinary Procedure

1.0 Introduction

The Council is committed to the highest possible standards of behaviour / conduct and, in line with that commitment, expects all its employees to behave / conduct themselves professionally, courteously, sensibly and with credit to the Council.

The Council acknowledges that, in general, management will have no cause to question the behaviour / conduct of its employees. However, it is inevitable that some employees might not always behave / conduct themselves acceptably. If management alleges that an employee's behaviour / conduct in a particular situation is unacceptable, that employee will be dealt with in accordance with this Policy.

1.1 Scope of this Policy

This Policy applies to all employees of the Council.

Trade Union Representatives

Although the same standards of behaviour / conduct apply to Trade Union representatives as they do to other employees, no disciplinary action either informal or formal must be taken against an accredited representative of a recognised Trade Union until the circumstances of an allegation have been discussed with a full time union official of the Trade Union concerned.

Where this applies, advice must be obtained from the Town Clerk.

1.2 Aims of this Policy

Disciplinary policies and procedures are necessary for promoting fairness and consistency in the treatment of employees and for maintaining and improving behaviour / conduct. This Policy sets out standards of behaviour / conduct required from employees, procedures that will be followed to enforce those standards and provides a fair method of dealing with alleged failures to observe them whilst ensuring that the principles of natural justice are considered throughout.

1.3 Key Principles of this Policy

The key principles of this Policy are to:

- inform employees of the standards of behaviour / conduct expected from them and to provide examples of the types of behaviour / conduct which are unacceptable;
- inform employees of the possible consequences of a finding that they have behaved / conducted themselves unacceptably;
- inform employees about how an allegation against them will be dealt with and confirm that they will be provided with an opportunity to state their case before decisions are reached and an opportunity to appeal against any disciplinary sanction;
- ensure that allegations are dealt with thoroughly and as quickly as possible.

1.4 Standards of Behaviour / Conduct

Managers must ensure that the standards of behaviour / conduct required by the Council are explained to employees so they are left in no doubt about what is expected of them. Managers must ensure that employees have seen and understood the Employee Code of Conduct and related policies including financial policies and procedures. Managers must give employees the necessary support, assistance and encouragement to help them reach and maintain those standards of behaviour / conduct and also explain to employees the consequences of not reaching and / or maintaining them.

In dealing with cases involving alleged failures to observe appropriate standards of behaviour / conduct a distinction must be drawn between genuine performance issues, which must be dealt with under the Council's procedure for improving performance, the Capability Procedure, and employees who willfully refuse to work to a satisfactory level, which is a behaviour / conduct issue that must be dealt with in accordance with this Policy.

An employee's duty to the Council may extend outside their place of employment and outside of working hours and therefore any alleged misconduct and / or criminal activity outside work which could bring the Council into disrepute may bring about disciplinary action.

1.5 Informal and Formal Action

This policy provides for an informal discussion with the employee and the manager with a view to helping employees to understand the standards of behaviour / conduct expected of them.

If an employee's behaviour / conduct cannot be addressed through an informal discussion or the allegation(s) are considered to be serious, the matter must be referred to the town clerk, who will consider what further action is appropriate and whether the matter should proceed to the Formal Disciplinary Procedure.

1.6 The Right to be Accompanied / Represented

Informal Discussion – this is a management meeting with the employee and therefore employees do not have the right to be accompanied or represented at this meeting.

Formal Stages - employees have the statutory right to be accompanied at any stage of the Formal Disciplinary Procedure by a Trade Union representative or a work colleague.

Employees have the contractual right to be represented during formal hearings by a Trade Union Representative or a work colleague.

An employee who is a Trade Union representative may be accompanied or represented by a full-time Trade Union Official at any stage of the Formal Disciplinary Procedure.

1.7 Financial Irregularity

Where a financial irregularity occurs the town clerk will determine if an Investigation is required under the Formal Disciplinary Procedure. In such cases the town clerk will agree an appropriate approach to the investigation. This may include holding joint interviews. The town clerk and the chair of the employment sub-committee will agree an appropriate approach to the investigation. This may include holding joint interviews

In some cases the town clerk may 'fact find' into issues such as fraud, theft or other financial irregularities prior to an investigation being invoked. If the allegation is concerning the town clerk the chair of the employment sub-committee will assume the role of the town clerk.

1.8 Notification and Postponements

Employees must be notified in writing in advance of any meeting, hearing or appeal arranged under the Formal Disciplinary Procedure. In this case 15 working days' notice must be provided for a Disciplinary Hearing or a Disciplinary Appeal Hearing and 5 working days' notice for any other meetings, including the appeal against a Recorded Oral Warning.

Employees must take all reasonable steps to attend any meeting, hearing or appeal. An employee who cannot attend a meeting, hearing or appeal must inform the Investigating officer in advance whenever possible.

If an employee fails to attend a meeting, hearing or appeal and has good reason for non-attendance, e.g. circumstances outside of their control and unforeseeable at the time the meeting, hearing or appeal was arranged, another date will be arranged. However, if they fail to attend this re-arranged meeting, hearing or appeal without good reason it may be progressed in the employee's absence. Failure to attend a meeting, hearing or appeal without good reason could also constitute unacceptable behaviour / conduct in its own right and could lead to further disciplinary action being taken against the employee.

In circumstances where the employee produces a doctor's 'fitness for work note' (sick note) stating they are unfit to attend a meeting, hearing or appeal, a postponement can be agreed pending receipt of medical advice from an Independent Occupational Health Consultant to establish when the employee will be fit to attend that meeting, hearing or appeal. employees must comply with reasonable requests to attend an appointment with an Independent Occupational Health Consultant for management to obtain this medical advice. Medical circumstances, however, cannot be a continued reason for postponing a meeting, hearing or appeal indefinitely.

Where the medical advice received from an Independent Occupational Health Consultant is that the employee's absence is likely to continue for a prolonged period, a discussion must be held with the employee and any representative to determine how the meeting, hearing or appeal can be facilitated. A meeting, hearing or appeal can take place in the absence of the employee and each case will be considered on its own merits.

Where it is known that the employee is absent due to sickness prior to a meeting, hearing or appeal being arranged and their likely date of return is not known then the employee should be referred to an Independent Occupational Health Consultant to determine when they are likely to be fit to attend the meeting, hearing or appeal (for minor or short term ailments a GP's note will suffice).

1.9 Submission of Grievances

If an employee wishes to raise a grievance whilst they are subject to the Formal Disciplinary Procedure they must follow the Grievance Procedure. The town clerk will consider the nature and the contents of the submitted grievance and where the grievance is connected to the disciplinary process, it will be considered as part of the Formal Disciplinary Procedure. If the submitted grievance is not connected to the disciplinary process, it will be considered in accordance with the Grievance Procedure. If the allegation is concerning the town clerk the chair of the employments sub-committee will assume the role of the town clerk.

2.0 Unacceptable Behaviour / Conduct

2.1 Misconduct - is a breach of discipline which is not sufficiently serious to warrant an immediate dismissal (summary dismissal), but will warrant action being taken under this Policy up to and including dismissal on notice or with pay in lieu of notice. Examples of misconduct are listed below. This list is not intended to be exclusive or exhaustive and there may be other incidents of misconduct of a similar gravity which could result in action up to and including dismissal on notice or with pay in lieu of notice being taken under this Policy.

- failure to follow a reasonable management instruction;
- minor instance(s) of neglect of duties and responsibilities;
- minor breach(es) of the Council's acceptable standards of behaviour / conduct;
- poor timekeeping including unauthorised absence.

2.2 Gross Misconduct – is a breach of discipline which is serious enough to significantly affect future working relations and destroy trust and confidence between the Council and the employee and will, even for first incidents of gross misconduct, normally lead to summary dismissal, i.e. dismissal without the normal period of notice or pay in lieu of notice. Examples of gross misconduct are listed below. This list is not intended to be exclusive or exhaustive and there may be other incidents of gross misconduct of a similar gravity which could result in action up to and including summary dismissal being taken under this Policy.

- theft and / or unauthorised possession of property belonging to the Council and / or another person;
- fraud, bribery and / or deliberate falsification of records;
- physical violence, bullying, disorderly conduct and / or assault against another person;

- deliberate and / or serious damage to property;
- accessing pornographic internet sites and / or sending or receiving offensive and / or obscene material;
- failure to follow a reasonable management instruction;
- discrimination and / or harassment, for example on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation;
- bringing the Council into disrepute;
- serious incapability at work brought on by alcohol and / or illegal drugs;
- causing loss and / or damage and / or injury through serious negligence;
- serious breach(es) of Health and Safety at Work rules and procedures;
- serious breach(es) of trust and / or confidence and / or unauthorised use and / or disclosure of confidential information;
- serious breach(es) of the Council's Code of Conduct and/or any relevant professional Codes of Conduct;
- gross incompetence;
- unauthorised use of and/or tampering with computer hardware and / or software.

3.0 THE INFORMAL DISCUSSION

3.1 Introduction

The Informal Discussion with the manager and the employee should be two-way and be with a view to helping the employee understand the standards of behaviour / conduct expected of them and for the manager to understand the full circumstance.

Having an Informal Discussion does not mean that the matter(s) will necessarily progress to the Formal Disciplinary Procedure.

It is expected that an Informal Discussion will mean that there is likely to be less recourse to the Formal Disciplinary Procedure and an earlier resolution to the behaviour / conduct being addressed.

3.2 Informal Discussion

The manager must speak to the employee in private, explain what they have identified as a shortcoming in behaviour / conduct and provide the employee with the right to reply.

In considering how the employee can be supported in meeting the standards of behaviour / conduct expected of them, managers must ensure that the discussion is constructive with an emphasis on finding ways to improve and be sustained. The manager must keep a note of any informal discussion for future reference purposes.

Managers must be clear on what improvements need to be made by the employee, over what period and how they will be monitored.

Managers must continue to review the employee's behaviour / conduct over the period for improvement identified. Where it improves and an acceptable standard of behaviour / conduct is maintained, the manager must inform the employee accordingly.

If the manager considers the matter(s) cannot be resolved through this informal discussion process they must refer the matter(s) to the town clerk who will consider what further action is appropriate.

4.0 THE FORMAL DISCIPLINARY PROCEDURE

4.1 Introduction

If an employee's behaviour / conduct cannot be addressed through the informal discussion or the allegation(s) are considered to be serious, the matter must be progressed to the manager to consider what further action it appropriate.

The manager may consider that the matter(s) can be dealt with by the manager meeting with the employee to consider issuing a Recorded Oral Warning, without the need to conduct an Investigation. In these circumstances the maximum sanction that the manager can give the employee is a Recorded Oral Warning. Alternatively, the manager may consider it is necessary to commission an Investigation.

4.2 Recorded Oral Warning

The purpose of this management meeting is to determine whether a Recorded Oral Warning should be issued to the employee. The employee's manager will chair the meeting and the employee will be given the opportunity to respond to the issues that have been raised in relation to their behavior / conduct.

The meeting will be recorded by the Administrative Officer.

The manager must give the employee at least 5 working days' notice in writing of the meeting and they must use this time to make arrangements for the attendance of a Trade Union Representative or a work colleague, should they wish to be so accompanied or represented. The letter must specify sufficient detail of the issues of behaviour / conduct in order to give the employee an opportunity to respond to the issue(s) during the meeting.

Conclusion of the Meeting

At the conclusion of the management meeting, the manager may after appropriate consideration provide a verbal outcome of their decision. Confirmation of the outcome of the management meeting must be provided to the employee in writing as soon as is reasonable practicable but no later than 3 working days after the conclusion of the meeting unless otherwise notified to the employee and any representative

Outcome – a Recorded Oral Warning is the maximum sanction that can be issued at the management meeting. This will be effective from the date it was given for a period of 6 months, after which time it will be disregarded. The Recorded Oral Warning will be retained on the Council's personnel records and the employee's file.

Appeal - if the employee wishes to appeal against a Recorded Oral Warning they must do so in writing, setting out the reasons for their appeal. This must be received by the town clerk of the within 10 working days of receipt of the manager's letter confirming the outcome of the management meeting.

The town clerk will determine which manager hears the appeal.

The employee must be given at least 15 working days' notice in writing of the date of the Appeal and must use this time to make arrangements for the attendance of a Trade Union representative or a work colleague, should they wish to be so accompanied or represented.

Conclusion of the Appeal

At the conclusion of the Appeal the Hearing Officer may after appropriate consideration provide a verbal outcome of their decision. Confirmation of the outcome of the Appeal must in any event be provided to the employee in writing as soon as is reasonably practicable but no later than 3 working days after the conclusion of the Appeal unless otherwise notified to the employee and any representative.

Outcome of the Appeal

The Hearing Officer may:

- Uphold the decision of the manager; or
- Revoke the Recorded Oral Warning.

4.3 Investigation

If the manager considers that the matter referred to them cannot be resolved by consideration of issuing a Recorded Oral Warning or that the allegation(s) are serious enough to proceed to the Formal Disciplinary Procedure, they must refer to the Town Clerk for possible investigation

The town clerk must inform the employee in writing when an investigation has commenced.

The town clerk must interview the employee and any other relevant witnesses and gather all relevant evidence relating to the allegation(s).

If, at any time during the Investigation, the town clerk decides there is no case to answer to he must inform the manager. If the decision is made that the Investigation no longer needs to be undertaken, the employee must be informed of this as soon as possible. This decision must also be confirmed to the employee in writing as soon as is reasonably practicable.

If, during the course of the Investigation, new allegation(s) are brought to the attention of, the town clerk, they must review the case and consider whether or not it is appropriate to include in the current investigation or whether it is more appropriate to refer the new allegations to another manager.

Once the town clerk has completed their Investigation they must produce a Statement of Case and provide this to the employment sub-committee for consideration.

The employment sub-committee may request additional information from the town clerk following the submission of the Statement of Case and prior to making a decision about what action, if any, to take next.

If the employment sub-committee considers that there is sufficient evidence to support the allegation(s) against the employee; they must confirm to the employee that it is necessary to proceed to a Disciplinary Hearing.

If the employment sub-committee considers that there is insufficient evidence to support the allegation(s) against the employee, they must meet with the employee to explain the outcome of the Investigation and that no further action will be taken in accordance with the Formal Disciplinary Procedure. This outcome must also be confirmed to the employee in writing as soon as is reasonably practicable.

4.4 Suspension / Restricted Duties

An employee may be suspended or given restricted duties by the employment sub-committee.

Consideration of suspension from duty or restricted duties as an alternative to suspension must always be undertaken for alleged gross misconduct.

If an employee is suspended or given restricted duties or temporarily redeployed as an alternative to suspension, that arrangement must be reviewed by the town clerk on a 4 weekly basis. The outcome and reasons (including details of the alleged misconduct and circumstances why management have decided that this arrangement is appropriate to continue) must be communicated in writing to the employee as soon as is reasonably practicable after each review.

During the period of suspension or restricted duties as an alternative to suspension, employees will be paid their normal level of contractual pay including any bonus / contractual overtime. Non-contractual pay will not normally be paid during this period.

4.5 Malicious Allegations of Unacceptable Behaviour / Conduct

If at any stage of the Investigation, the town clerk considers that any allegation(s) made against an employee are malicious, this must be brought to the attention of the employment sub-committee, who must consider whether it is appropriate to pursue disciplinary action in accordance with this Policy against the person(s) responsible for making the malicious allegation(s).

4.6 Disciplinary Hearing

The purpose of the Disciplinary Hearing is to reach findings upon the facts of an allegation(s) in order to determine the validity or otherwise of the allegation(s) against the employee and, if misconduct or gross misconduct is proven, to determine which outcome is appropriate for the employee. The town clerk must make a judgment on the facts presented and have no pre-conceived views on the outcome of the Disciplinary Hearing.

The Disciplinary Hearing will be chaired by the chair of the employment-sub-committee along with 2 other council members.

The employee must be given at least 15 working days' notice in writing of their Disciplinary Hearing and must use this time to make arrangements for the attendance of a Trade Union Representative or a work colleague, should they wish to be accompanied or represented.

The letter will specify sufficient details of the allegation(s) against the employee in order to give the employee an opportunity to respond to the allegation(s) during the Disciplinary Hearing.

The employee and management must provide all documents and other evidence upon which they wish to rely at the Disciplinary Hearing at least 10 working days' prior to the Disciplinary Hearing. These documents and other evidence provided will be sent to the other party and provided to the employment sub-committee at least 5 working days in advance of the Disciplinary Hearing.

Any documents and other evidence supplied after the 10 working day deadline will not be sent to the other party in advance of the Disciplinary Hearing. Late submissions should be avoided and will only be considered by the employment sub-committee on the day of the Disciplinary Hearing. The employment sub-committee will consider the reason for the late submission and decide whether or not to accept those documents and other evidence supplied late. If the decision is made to accept the documents and other evidence, they will then be provided to the other party and, if necessary, the Disciplinary Hearing will be adjourned.

4.7 Conclusion of the Disciplinary Hearing

At the conclusion of the Disciplinary Hearing, the chair of sub-committee may after appropriate consideration provide a verbal outcome of their decision. Confirmation of the outcome of the Disciplinary Hearing must in any event be provided to the employee in writing as soon as reasonably practicable but no later than 3 working days after the conclusion of the Disciplinary Hearing unless otherwise notified to the employee and any representative.

4.8 Outcomes of the Disciplinary Hearing

The committee having given due consideration to all of the evidence presented must decide which of the following outcome is appropriate:

No Action

The employee will be advised in writing that no action will be taken in cases where it is found that unacceptable behaviour / conduct has not occurred or where there is insufficient evidence to conclude that unacceptable behaviour / conduct has occurred.

Where this outcome is taken, recommendations that specific actions be taken can still be made. This could include instructions to the management.

Written Warning

A Written Warning may be issued to the employee for unacceptable behaviour / conduct. This will be effective from the date it was given for a period of 12 months, after which it will be disregarded, provided no further unacceptable behaviour / conduct is found to have occurred during this period.

The Written Warning will inform the employee of the consequences should they be found to have committed further unacceptable behaviour / conduct within the 12 months it is in

place. The Written Warning will be retained on the Council's personnel records and the employee's file.

Final Written Warning

A Final Written Warning may be issued to the employee for:

- a repeat of unacceptable behaviour / conduct;
- more serious occurrences of unacceptable behaviour / conduct committed whilst a Written Warning is in place;
- a serious occurrence of unacceptable behaviour / conduct; and
- an occurrence of gross misconduct where strong mitigation has been presented.

The Committee will define the time limit of the Final Written Warning, which can be from 12 months up to 2 years. This will be effective from the date it was given and provided no further unacceptable behaviour / conduct is found to have occurred during this period will be disregarded after the defined period.

The Final Written Warning will inform the employee of the consequences should they be found to have committed further unacceptable behaviour / conduct within the defined period. The Final Written Warning will be retained on the Council's personnel records and the employee's file.

Dismissal

A Dismissal should be the expectation for:

- a repeat of more serious occurrences of unacceptable behaviour / conduct whilst a Written Warning or Final Written Warning is in place;
- any occurrence of gross misconduct where strong mitigation has not been presented.

Dismissal may be with notice, paid in lieu of notice if appropriate, or without notice (a summary dismissal, which is immediate).

5.0 RIGHT OF APPEAL

If the employee wishes to appeal against a disciplinary sanction they must do so in writing, setting out the reasons for their appeal.

Appeals against a Written Warning must be received by the town clerk within 10 working days of receipt of the letter informing the employee of their disciplinary sanction.

Appeals against a Final Written Warning or Dismissal must be received by the town clerk within 10 working days of receipt of the letter informing the employee of the disciplinary sanction.

5.1 Disciplinary Appeal Hearing

The Disciplinary Appeal Hearing is a re-hearing of the Disciplinary Hearing and its purpose is therefore to reach findings on the facts of the allegation(s) against the employee in order to determine their validity or otherwise.

The Disciplinary Appeal Hearing will be conducted by the appeal panel and 3 members of the Council who are not on the Sub Committee.

The employee must be given at least 15 working days' notice in writing of their Disciplinary Appeal Hearing and must use this time to make arrangements for the attendance of a Trade Union representative or a work colleague, should they wish to be so accompanied or represented.

The employee and management must provide all documents and other evidence upon which they wish to rely at the Disciplinary Appeal Hearing at least 10 working days' prior to the Disciplinary Appeal Hearing. These documents and other evidence provided will be sent to the other party and provided to the Appeal Panel at least 5 working days in advance of the Disciplinary Appeal Hearing.

Any documents and other evidence supplied after the 10 working day deadline will not be sent to the other party in advance of the Disciplinary Appeal Hearing. Late submissions should be avoided and will only be considered by the Appeal Panel on the day of the Disciplinary Appeal Hearing. The Appeal Panel will consider the reason for the late submission and decide whether or not to accept those documents and other evidence supplied late. If the decision is made to accept the documents and other evidence, they will then be provided to the other party and, if necessary, the Disciplinary Appeal Hearing will be adjourned.

The Appeal Panel will be advised by the Administrative Officer.

Final Written Warning / Alternative to Dismissal / Dismissal

The employee and management must provide all documents and other evidence upon which they wish to rely at the Disciplinary Appeal Hearing at least 10 working days prior to the Disciplinary Appeal Hearing. These documents and other evidence provided will be sent to the other party and provided to the Appeal Panel at least 5 working days prior to the Disciplinary Appeal Hearing.

Any documents and other evidence supplied after the 10 working day deadline will not be sent to the other party in advance of the Disciplinary Appeal Hearing. Instead, their late supply will be referred to the Appeal Panel at the start of the Disciplinary Appeal Hearing for a decision to be made by the Appeal Panel about whether or not to accept those documents and other evidence supplied late. If the decision is made to accept the documents and other evidence, they will then be provided to the other party and, if necessary, the Disciplinary Appeal Hearing will be adjourned.

5.2 Conclusion of the Disciplinary Appeal Hearing

At the conclusion of the Disciplinary Appeal Hearing, the Appeal Panel may after appropriate consideration provide a verbal outcome of their decision. Confirmation of the outcome of the Disciplinary Appeal Hearing must in any event be provided to the

employee in writing as soon as is reasonably practicable, but no later than 3 working days after the conclusion of the Disciplinary Appeal Hearing unless otherwise notified to the employee and any representative.

5.3 Outcomes of the Disciplinary Appeal Hearing

The Appeal Panel having given due consideration to all of the evidence presented may:

- Uphold the decision of the original Committee;
- Revoke or vary a disciplinary sanction issued by the original Committee. Where a lesser outcome such as a Written Warning or Final Written Warning is imposed, the relevant time limit for the new disciplinary sanction will run from the date of the Disciplinary Hearing and not the date of the Disciplinary Appeal Hearing.