

**Dursley Town Council
Disciplinary Policy & Procedure
Adopted 2012**

1. Introduction

1.1 This disciplinary procedure is based upon the ACAS Code of Practice on Disciplinary and Grievance Procedures, and incorporates the requirements of the Employment Act 2002 and the Dispute Resolution Regulations 2004.

1.2 The purpose of the disciplinary procedure is to ensure that poor standards of work and conduct are addressed through specifying the improvements required and the framework for monitoring future work performance and conduct. Use of the disciplinary procedure should be seen as a last resort - it should not be used to replace good management practice. It should be used to help and encourage improvement rather than being a way of imposing a punishment

2. Principles

- Support will be offered to employees to resolve problems, wherever appropriate
- Any employee subject to the procedure, 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.
- At all stages of the procedure the employee will have the right to be accompanied by a trade union representative, work colleague or friend
- No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty will be dismissal without notice or payment in lieu of notice.
- An employee will have the right to appeal against any discipline imposed. No action will be taken against an employee until the case has been fully investigated.
- Information about an employee's performance or any action taken under this procedure is confidential and shall only be shared on a strict 'need to know' basis.
- An employee is entitled to a fair hearing at all stages.
- All action under this procedure will be completed as quickly as possible.

3. Key Responsibilities

3.1 The Town Clerk is responsible for day to day monitoring of the performance and conduct of all other council employees. The authority to institute formal action under this procedure is delegated to the Town Clerk in consultation with the Mayor or Deputy Mayor.

3.2 The Mayor and Deputy Mayor have delegated responsibility for the day to day monitoring of the Town Clerk's conduct and performance. The authority to institute formal action against the Town Clerk is delegated to the Mayor and Deputy Mayor in consultation with committee chairs. If a committee chair cannot be consulted due to illness, holiday or similar reason, such decisions are not to be delayed.

- 3.3 A decision to impose any disciplinary measure shall only be made by a panel convened in accordance with Appendix 2.
- 3.4 A decision to suspend an employee in accordance with paragraph 5.6 may only be made by the Mayor and/or the deputy mayor.
- 3.5 Every member of the council and every council employee is responsible for reporting any concern regarding the conduct or performance of any council employee including Health & Safety issues.
- 3.6 Appeals against disciplinary measures shall be heard by the Staffing Committee in the case of any formal warning, including a final written warning. Any decision to dismiss an employee shall be reviewed by the whole council, whether an appeal has been lodged or not.

4. Informal Action

- 4.1 Normally, discipline is effectively maintained by example, advice, job training and informal reprimands, and by members of staff abiding by the proper standards of conduct, and the rules and regulations of the Council.
- 4.2 The Town Clerk is responsible for specifying and enforcing the standards of behaviour and performance required. In cases of minor infringements, misdemeanours or under-performance the Town Clerk should talk to the employee on an informal basis with a view to effecting an improvement in work or conduct, and to avoid using formal action.
- 4.3 The member of staff should be advised of the conduct or standard expected in the future and of the possible consequences of further problems. If the misconduct or unsatisfactory performance persists and is not considered to be serious enough to invoke formal action, recorded discussions should take place with the employee. Such informal discussions, which are part of normal supervisory responsibilities, are separate from the formal disciplinary procedure.
- 4.4 Where there are concerns regarding the performance of the Town Clerk such informal action is to be undertaken by the Mayor and Deputy Mayor.

5. Formal Action

- 5.1 Formal action is to be taken where improvement has not been brought about by informal action or where misconduct or unsatisfactory performance is considered to be too serious to warrant informal action. Appendix 1 provides guidance on what may constitute misconduct and gross misconduct.
- 5.2 Where formal action is instituted, an investigatory meeting will be convened. The employee concerned shall be given written notice of such meeting, which shall specify the reasons for the meeting. The employee will be reminded that they may be accompanied at the meeting by a trade union official, a work colleague or friend. All such meetings shall be conducted in accordance with Appendix 2.
- 5.3 The employee shall receive at least three working days notice of an investigatory hearing. If the employee has genuine difficulties in attending the meeting or in arranging the attendance of a representative, the meeting may be delayed for such period as is reasonable.
- 5.4 In any case where an employee might be dismissed, the notice will advise him or her of this possibility.

5.5 Nothing in this procedure shall prevent the council from engaging any external consultant to advise upon or to investigate any disciplinary matter. In cases of urgency, the Mayor and the Deputy Mayor shall have delegated authority to incur expenditure of up to £1,000 upon such services. Such expenditure shall be reported to Staffing Committee members. No further expenditure shall be incurred except in accordance with the council's standing orders and constitution.

5.6 Suspension

In cases of alleged gross misconduct or negligence the employee may be suspended from work on full pay if his or her continuing presence at work would clearly be prejudicial to the satisfactory operation of the council's business. Any suspension shall be for as short a period as possible and must be brought to an end as soon as any investigation indicates that there are no longer any reasons for it to continue. In any event, the suspension must be formally reviewed by the Mayor and Deputy Mayor after one month.

5.7 Police Investigation

Where an employee is suspected of any criminal offence while engaged on the council's business, the Town Clerk or the Mayor and Deputy Mayor shall consider whether to report the matter to the police. Such action will not relieve the council of responsibility to conduct its own separate investigation.

6. Appeals against Disciplinary action

6.1 The employee may appeal against any disciplinary measure within 14 days of receiving notification as set out in Appendix 2 below. At least 14 days notice shall be given of an appeal hearing, which shall be convened on a Tuesday. Where an employee has genuine difficulties in attending the meeting or in arranging representation, the Appeal hearing may be delayed for such period as is reasonable.

6.2 An employee may make verbal and/or written representations to an appeal hearing. All such hearings shall be conducted in accordance with Appendix 3.

6.3 An appeal hearing shall proceed in the absence of an employee if they fail to attend the hearing within 15 minutes of the time appointed for the hearing without having given prior notice.

6.4 No member of the council shall participate in the consideration of appeals or be present where such appeals are considered if:

- He or she has been a member of any panel that has imposed the disciplinary measure subject to appeal, or
- He or she has provided any evidence in proceedings that have resulted in the disciplinary action subject to appeal, or
- He or she has provided advice or been consulted on the taking of the specific disciplinary measure subject to appeal, or
- He or she has any other conflict of interest.

6.5 A member shall not be excluded from participation where they have been consulted on whether formal disciplinary action should be instituted.

Appendix 1 - Misconduct & Gross Misconduct

Misconduct

- I The following list sets out examples of breaches of discipline, which may render an employee liable to disciplinary action. These examples would not normally justify dismissal for a first offence
- Persistent lateness and poor time-keeping.
 - Absence from work, including going absent during work, without valid reason, notification or authorisation.
 - Failure to observe Town Council regulations and procedures.
 - Failure to comply with a reasonable instruction
 - Insubordination
 - Unauthorised use of council equipment or property for personal purposes.
 - Acting contrary to the interests of the council.
 - Neglect of council equipment
 - Health & Safety breaches of a serious nature

Gross Misconduct

- li Gross misconduct is misconduct that is so serious that it destroys the employment contract between employer and employee and makes any further working relationship and trust impossible. Where it is believed that an employee has committed an act of gross misconduct they may (following proper investigation where necessary and disciplinary hearing) be summarily dismissed (i.e. the dismissal should be without notice period or pay in lieu of notice).
- lii There is no exhaustive list of gross misconduct but the following actions (or inaction) may amount to gross misconduct, if proven.
- Theft of the council's property
 - Fraud and/or deliberate falsification of record
 - Physical or verbal assault at work
 - Deliberate damage to council property
 - Serious negligence which causes unacceptable loss, damage or injury
 - Serious acts of insubordination
 - Serious infringement of health and safety rules
 - Serious breach of confidence
 - Accessing, viewing or sending inappropriate material using the council's IT facilities
 - Serious bullying or harassment at work
 - Bringing the Town Council into disrepute
 - Discrimination against any person on grounds of gender, race, religion or sexuality
 - Criminal offences outside of work that make the employee unsuitable to continue their duties for the Town Council

Appendix 2 – Conduct of Investigatory Hearings

- i The purpose of the meeting is to fully investigate the allegation and to determine whether the complaint is justified and disciplinary measures should be taken.
- ii The meeting shall be conducted by a panel comprising of three members of the council, who shall be drawn by lot by the Mayor together with three reserves. The three panel members shall decide who which one of them will chair. The other two panel members shall take notes of meeting.
- iii The employee may be accompanied by an advisor of whoever he/she wishes. The employee shall have the opportunity to ask for an adjournment to consult privately with their advisor at any point.
- iv Procedure
 - (a) The chair will introduce everyone present and outline the procedure.
 - (b) The chair will invite the Town Clerk or other investigator to present the concerns about the employee.
 - (c) The employee or their representative shall have the opportunity to ask questions.
 - (d) The Panel may ask questions
 - (e) The employee or their representative shall have the opportunity to provide submissions on the facts.
 - (f) The Town Clerk or other investigator shall have the opportunity to ask questions
 - (g) The panel may ask questions.
 - (h) The panel shall deliberate in private.
 - (i) The meeting shall be reconvened and the chair will report the panel's finding on fact.
 - (j) If there is a finding of misconduct, the chair will invite any submissions by way of mitigation.
 - (k) The Panel shall again retire to consider appropriate disciplinary measures
 - (l) The meeting shall be reconvened to deliver the disciplinary measure if any.
- v The panel will consider Verbal, visual and/or written evidence. The meeting may be adjourned at any point if the chair considers it expedient or if further information or investigations are necessary.
- vi The panel has delegated authority to impose any disciplinary measure including dismissal.
- vii The employee shall receive notification of the panel's decision with a summary of reasons within 48 hours. The employee shall be notified of their right to appeal. Any decision to dismiss shall be effective as directed by the panel. Any decision to dismiss an employee shall be reviewed by the whole council at its next meeting.

Appendix 3 - Conduct of Appeal Hearings

- i The appeal hearing is not a complete rehearing of the case. It provides the opportunity to the employee to challenge both the finding of fact and the disciplinary measure imposed at the original hearing.
- ii The employee or former employee shall only be permitted to submit new evidence where:
- iii
 - Such evidence could not reasonably have been presented at the original panel hearing, and
 - The exclusion of such evidence may result in substantial unfairness to the employee.
- iv Where the employee wishes to rely on such evidence, they must give notice of it when they lodge their appeal.
- v The Staffing Committee or Council as the case may be, shall by resolution decide whether or not to hear such evidence. If, exceptionally, the new evidence is presented after the employee or former employee has lodged their appeal, and the committee resolve to hear it, they shall further consider whether the hearing shall be adjourned to enable further investigations to be conducted.
- vi If the Mayor and Deputy Mayor are ineligible to participate in the hearing by virtue of paragraph 6.4 of this procedure, the chair of the hearing shall be drawn by lot from the other committee chairs in advance of the meeting together with reserves.
- vii All members participating shall receive full records of the hearing together with notice of the panel's decision and any submissions presented by the employee or former employee. Such documentation shall be returned to the Town Clerk or Mayor at the conclusion of the hearing.
- viii In the case of dismissal, the former employee shall be notified of their right to be heard whether they have requested a hearing or not.
- ix Procedure
 - (a) The employee or former employee shall be invited to present their case.
 - (b) The employee or former employee shall be invited to ask questions of the original panel members.
 - (c) The members of the original panel shall be invited to respond to the employee's or former employees case.
 - (d) The original panel members may ask questions of the employee or former employee
 - (e) Committee or council members may ask questions of all parties
 - (f) The parties will leave the meeting to enable deliberations in private
 - (g) The parties will return to the meeting to hear the outcome of the appeal
- x The committee or council may by resolution revoke or confirm any decision made by the original panel including the disciplinary measures imposed and/or determine alternative measures.
- xi The decision of the hearing shall be final.