

Disciplinary Procedure

Honiton Town Council

1 Introduction

This procedure is designed to help and encourage all employees to achieve and maintain acceptable standards of conduct and job performance. The aim is to ensure consistent and fair treatment for the individual. This procedure sets out the framework for resolving issues relating to misconduct and unsatisfactory performance in accordance with the Employment Rights Act 1996, Human Rights Act 1998, and the ACAS Code of Practice on Disciplinary Procedures.

This procedure applies to all employees except where it conflicts with a contractual or statutory requirement, which takes precedence.

2 General Principles

The procedure is not a substitute for good management practices and should only be invoked when initial attempts to improve conduct have been made following discussions between the employee and their manager. However, where there has been gross misconduct or a serious breach of disciplinary rules, the formal procedure should be actioned immediately.

No disciplinary action will be taken against an employee until the circumstances have been fully investigated.

The employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case at the appropriate stage.

The employee has the right to be represented at disciplinary hearings and appeals.

In all instances of alleged misconduct, the employee will be given at least 5 working days' notice of the requirement to attend a Hearing or Appeal. Should the employee fail to attend without an acceptable reason, then the Chair of the Hearing or Appeal may proceed in the employee's absence.

Any disciplinary action taken will depend on the nature of the offence, the past recorded behaviour of the employee concerned, the consequence to the Council of the offence, and any explanation presented by the employee.

Employees have the right to Appeal against any disciplinary warnings and dismissal.

It is important that employees read and understand this document. If employees are not sure about any part of it, they should ask their line manager, who will provide the necessary clarification.

3 Roles and Responsibilities

It is advisable to determine the roles and responsibilities of those potentially involved in the disciplinary procedure at the earliest opportunity so that those roles are not compromised.

3.1 Line Manager

The Line Manager is normally responsible for considering minor disciplinary issues and resolving them, if they can, without recourse to the informal or formal procedure. The Line Manager could also be the Town Clerk.

Allegations of more serious misconduct or where a previous warning has been given but the required improvement has not been made should immediately be referred to the Town Clerk.

3.2 Town Clerk

The Town Clerk is normally responsible for managing the formal disciplinary procedure including appointing an appropriate Investigating Officer. Alternatively, they may appoint another individual to manage the process, if required.

3.3 HR Committee

The HR Committee is normally responsible for managing the disciplinary process and appointing an appropriate Investigating Officer for misconduct which relates to the Town Clerk.

3.3 Investigating Officer

The Investigating Officer is responsible for collecting evidence and gathering all documentation in relation to the allegation. The Investigating Officer need not be the employee's supervisor or Line Manager, although this would normally be the case. Where appropriate, an external investigating officer may be used. The Investigating Officer who carries out an investigation should not participate in any subsequent decision to take action under the procedure.

3.4 Hearing Panel

The Panel for a Hearing will normally comprise of the Town Clerk as observer and at least 3 Councillors from the HR Committee. For matters concerning the Town Clerk then the panel would normally comprise of three members of the HR Committee and an independent observer. The responsibilities and objective of the panel is set out in section 6.5.

The panel members Hearing a case should not have been involved in the investigation beforehand. The panel must not include the Investigating Officer. An independent HR representative can be called upon to advise the panel, if appropriate.

3.5 Appeal Panel

The Appeal Panel will normally be the Appeals Committee. The responsibilities and objective of the Appeal panel is set out in section 7.2.

The Appeal panel members should not have had any previous involvement in the matter. An independent HR representative can be called upon to advise the panel, if appropriate.

3.6 Note Taker

During each stage of the disciplinary procedure, it is recommended that a note taker is present to capture the context of the meetings.

3.7 Authorisation to Issue Sanctions

Outcome	Who is authorised to issue sanction
Oral Warning (informal)	Town Clerk
First Written Warning (formal)	Town Clerk (or the HR Committee, in relation to matters concerning the Town Clerk)
Final Written Warning (formal)	After a Hearing, delegated to the Town Clerk (or the HR Committee, in relation to matters concerning the Town Clerk)
Dismissal with notice (formal)	After a Hearing, delegated to the Town Clerk (or the HR Committee, in relation to matters concerning the Town Clerk)
Dismissal without notice (formal)	After a Hearing, delegated to the Town Town Clerk (or the HR Committee, in relation to matters concerning the Town Clerk)

In exceptional circumstances, such as the absence of the Clerk or where the Clerk is involved in the disciplinary process, it may be appropriate for the Chair of HR Committee to be given delegated authority to issue any level of sanction required.

4 Representation

Employees have the right to representation, either by a trade union representative or a work colleague, at the hearing and appeal stages of the formal procedure.

Representatives have the right to address the hearing or appeal. They may also ask questions and present the employee's case. However, they have no right to answer questions on the employee's behalf.

5 Informal Procedure

5.1 Informal Advice and Guidance

Where a minor breach of acceptable/established standards of conduct occurs, which does not justify formal disciplinary action, the Town Clerk will advise the employee concerned of the conduct and the standard expected in the future. In many cases, this will provide sufficient encouragement for the employee not to commit further acts of misconduct.

The employee will be offered guidance, support, and additional training – where appropriate – to achieve the necessary standards. Representation will not normally be appropriate. The Town Clerk should make a note of such informal advice and guidance and should set out in writing to the employee the required improvements and standards of conduct that are expected in the future. Records of informal advice/counselling should be kept on employee's personal files.

6 The Formal Procedure

The formal procedure will apply when:

- Previous informal advice or warnings have proved ineffective; or
- The allegation is of a serious nature; or
- A number of minor allegations are made which taken together could constitute a serious breach of discipline.

The Formal procedure will be arranged and managed by the Town Clerk (or an independent person if relating to the Town Clerk) and decisions made by the Hearing panel, for the Town Clerk to implement.

6.1 Suspension

In some circumstances, the Town Clerk (or the HR Committee, in relation to matters concerning the Town Clerk) may consider suspension with pay, pending further investigation or until the disciplinary hearing takes place. Suspension may be appropriate where:

- Cases potentially involve gross misconduct;
- Relationships have broken down; or
- There is a risk to the employer's property or to other people.

An employee should be advised that suspension in itself does not constitute disciplinary action.

An employee should be advised of the reasons for suspension in writing. The period of suspension should not normally last for more than 20 working days. However, this period can be extended where necessary.

The decision regarding whether or not suspension is necessary can be reviewed at any time during the disciplinary process.

6.2 Determining roles and responsibilities

Ahead of any investigation commencing, it is advisable to determine the roles and responsibilities of those involved. This would normally include:

- Appointing an investigating officer (normally by the Town Clerk or Chair of HR Committee if relating to the Town Clerk);
- Appointing the panel (at least 3 Councillors from the HR Committee), who would hear the disciplinary if later required;
- Convening the Appeal Committee, which would hear the Appeal, if later required.

Further guidance regarding roles and responsibilities is set out in section 3.

6.3 Investigation

Before any decision can be made about whether or not a disciplinary Hearing is necessary, an investigation must take place.

The responsibilities of the Investigating Officer are to collect evidence by interviewing any relevant witnesses and gathering all documentation. An Investigatory Interview will normally be held with the employee concerned. The purpose of the interview is to gather the employee's initial response to the allegations and to identify whether any further investigation is needed.

For the benefit of the employee and the Council, any investigation must be concluded within a reasonable timescale. If there is a delay in completing the investigation, it is the responsibility of the Investigating Officer to regularly update the employee or their representatives on the progress of the investigation.

Once the Investigating Officer has gathered all the relevant facts and reviewed the evidence, a report should be drafted to the Town Clerk (or HR Committee) recommending one of the following:

- Take no further action and inform the employee accordingly;
- Advise the arrangement of counselling, training, extra supervision, or written advice (as appropriate); or
- Arrange a disciplinary hearing.

6.4 Arranging a Hearing

If, following the recommendations of the Investigating Officer, the Town Clerk concludes that a Hearing is required then the necessary arrangements should be made by the Town Clerk.

The employee will be given at least 5 working days' notice in writing. The letter to the employee should include a clear written statement of the allegation, state the potential outcome of the hearing and a reminder of the employee's right to be represented. Enclosed with the letter should also be the investigation pack which would normally include a copy of the investigation report, supporting appendices and the relevant policy.

The Investigating Officer is responsible for presenting the case and making arrangements for any witnesses that they rely upon to attend the hearing.

The employee is responsible for arranging any representation they choose to have and any witnesses that they may wish to call. Details of any witnesses the employee intends to call and a copy of all documents that the employee may wish to refer to at the hearing must be submitted to the Hearing Chair at least 3 working days prior to the hearing.

6.5 Conducting a hearing

The objective of the Hearing panel (at least 3 Councillors from the HR Committee) is:

- To hear the evidence in respect of the allegation, the employee's response, and to decide whether or not the allegation is substantiated; and
- If the allegation is substantiated, to determine the disciplinary sanction to be applied in light of the seriousness of the offence and having regard to previous relevant disciplinary history.

The procedure to be followed is:

1. Introduction of the Panel members and outline of their roles;
2. Statement of the purpose of the hearing and the allegation(s);
3. Presentation of the case by the Investigating Officer with witnesses called as necessary;
4. Questions by employee or their representative;
5. Questions by the Panel;
6. Presentation of the case by the employee or their representative with witnesses called as necessary;
7. Questions from Investigating Officer;
8. Questions from Panel;
9. Concluding statement by Investigating Officer;
10. Concluding statement by employee or their representative;
11. Adjournment of the Panel to make its decision;

12. The Panel reconvenes and the employee/representative is informed of the decision and, if necessary, their rights of Appeal.

Requests for an adjournment can be made at any stage and it is up to the Chair to decide whether or not a request should be granted.

The decision of the Panel will be confirmed to the employee in writing within 5 working days. The letter should clearly set out:

- The Panel’s decision;
- The length of time that any warning will be active for;
- The expected improvement in conduct;
- Any assistance that will be provided to achieve this; and
- The employee’s right to Appeal.

6.6 Levels of Disciplinary Action

In determining the appropriate disciplinary action, regard should be given to the employee’s previous record, the gravity of the offence, and any explanation given.

Although the procedure implies a sequential approach, there may be certain circumstances where the matter needs to be considered immediately under Stages 2, 3, or 4.

Stage	Outcome	Description
Stage 1	Oral Warning (informal)	For a minor offence, a verbal warning (confirmed in writing) making it clear that further misconduct will render the employee liable to further disciplinary action including more severe consequences.
Stage 2	First Written Warning (formal)	For a more serious offence or where a previous warning to the employee has not resulted in the required improvement to their conduct.
Stage 3	Final Written Warning (formal)	For a sufficiently serious offence, which might warrant only one written warning but is insufficiently serious to justify dismissal, or where previous warnings have been ineffective.
Stage 4	Dismissal with notice (formal)	For an act or acts of misconduct, other than gross misconduct, by an employee who is under a written or final written warning. The employee will be liable to dismissal with notice or pay in lieu of notice.
	Dismissal without notice (formal)	In cases where gross misconduct is established, the employee will be liable to summary dismissal, i.e. without notice or pay in lieu of notice.

6.7 Length of Warnings

Records of informal meetings and formal warnings will be kept on employee's personal files. An oral warning will be live for 6 months, written warnings for 12 months and final written warnings will be live for 2 years from the date of the disciplinary hearing.

7 The Right of Appeal

An employee has the right to Appeal against disciplinary action resulting in a warning or their dismissal. The Appeal Committee will hear the Appeal, providing that they have had no previous involvement in the matter, assisted by an independent adviser, if appropriate.

An employee who wishes to Appeal must do so in writing to the Town Clerk (or Chair of the HR Committee, in relation to matters concerning the Town Clerk). This must be done within 10 working days of the disciplinary Hearing informing them of the disciplinary action taken. The Appeal letter must set out the grounds for the Appeal, normally under one of the following headings:

- The severity of the disciplinary action;
- The findings of the Panel on a point of fact which is pertinent to the decision of the Hearing; and
- A failure to adhere to the disciplinary procedure.

7.1 Arranging an Appeal

The date and time of the Appeal will be organised by the Town Clerk (or Chair of the HR Committee, in relation to matters concerning the Town Clerk). It is the responsibility of each side to prepare themselves for the Appeal, including arranging for any witnesses to attend.

The Chair of the original Panel and the employee or their representative will, where possible, agree papers for submission to the appeal 5 days prior to the hearing.

7.2 Conducting an Appeal Hearing

The objective is:

- To review the decision of the disciplinary Hearing and decide whether that action is warranted or not; and
- If the action is not warranted, to determine what action if any is appropriate;

In doing so, the Appeal Committee will have regard to seriousness of the offence and any previous relevant disciplinary history.

The procedure to be followed is:

1. Presentation of the case by the Manager (the Chair of the previous hearing) who took the disciplinary action;
2. Questions by the appellant to the Manager;
3. Presentation of the appellant's case, including calling any witnesses;
4. Questions by the Manager to the appellant and their witnesses;
5. Questions by the Appeals Panel to both parties and their witnesses;
6. Concluding statements by the parties. No new information should be introduced at this stage and the appellant should have the opportunity to sum up last;
7. Adjournment of the Panel to make their decision;
8. The appeal is reconvened if possible and both parties are informed of the decision;
9. Written confirmation of the Appeals Panel's decision within 5 working days of the hearing.

The Appeals Panel has the right to call its own witnesses should it consider this to be of assistance in making its decision.

8 Trade Union Officials

In normal circumstances, no action will be taken against an officer of a recognised trade union until the matter has been discussed with a full-time officer of that union.

9 Disciplinary Rules

It is difficult to define all the acts of misconduct that might lead to disciplinary action. As a general principle, a test of reasonableness would be applied, i.e. would a reasonable person be aware that disciplinary action would result from a certain act or omission?

The following are examples of the types of conduct that are unacceptable and might lead to disciplinary action. The list is not exhaustive and other behaviour not listed may lead to disciplinary action.

- Poor time-keeping/ attendance;
- Unjustifiable absence from work;
- Waste, loss or damage of Council property through failure to take due care;
- Negligence or failure in performance of duty;
- Inappropriate or unauthorised use of e-mail, IT, or telephone facilities;
or
- Being under the influence of alcohol or drugs.

9.1 Types of Gross Misconduct

Unacceptable conduct, which may be regarded as gross misconduct, is likely to lead to an employee's summary dismissal. This means dismissal without notice or pay in lieu of notice and occurs when the employment relationship between the Council and employee, and the trust which is inherent in that, is irrevocably broken.

The list below gives examples of matters likely to be regarded as gross misconduct and is not exhaustive.

- Refusing to follow reasonable management instructions;
- Theft from the Council, its Members, employees, or the public;
- Physical assault or verbal abuse;
- Fraud or deliberate falsification of records;
- Covert recording;
- Falsification of qualifications;
- Serious negligence which causes unacceptable loss, injury, or damage;
- Serious acts of insubordination;
- Serious breach of confidence;
- Use of privileged information for personal gain;
- Malicious damage to the Council's property;
- Sexual misconduct at work;
- Discrimination, victimisation, or harassment;
- Serious breaches of safety rules;
- Serious incapability through alcohol or drugs;
- Accessing or distributing pornography on the Council's IT facilities.

10 Training

Appropriate training will be given to the Town Clerk or any Members who might be involved in disciplinary or appeals meetings to ensure that they fulfil their responsibilities under this procedure.

Disciplinary procedure flow chart

Informal procedure (section 5)

- For minor breaches of acceptable/established standards of conduct.

The Line Manager (who may also be the Town Clerk) will advise the employee concerned of the conduct and the standard expected in the future.

The Line Manager should follow up the conversation with a letter ('management instruction') to the employee setting out the informal advice/guidance and the required improvements and standards of conduct that are expected in the future.

A copy of this letter ('management instruction') should be kept on the employee's personnel file.

Formal procedure (section 6)

- Where previous informal advice or warnings have proved ineffective; or
- The allegation is of a serious nature or;
- A number of minor allegations are made which taken together could constitute a serious breach of discipline.

Ahead of any investigation commencing, the roles and responsibilities for those potentially involved in the disciplinary process should be determined. (Section 3)

Step 1 – Investigation (section 6.3)

The nominated Investigating Officer will collect evidence by interviewing any relevant parties and gathering all documentation/evidence.

The Investigating Officer will produce an Investigation Report which will set all the relevant facts.

The Investigating Officer will send their completed Investigation Report including appendices to the individual nominated to manage the investigation process, who will review the information and decide whether to progress to a hearing.

If the decision has been made that a hearing is required, then the Town Clerk (or alternative nominated individual(s)) will make the necessary arrangements.

If the decision has been made that a hearing is not required, then the Town Clerk (or alternative nominated individual(s)) will notify the employee.

Step 2 – Hearing (section 6.4 & 6.5)

The Town Clerk (or alternative nominated individual(s)) will send a letter to the employee, inviting them to the disciplinary hearing with at least 5 working days' notice. This will include a clear statement of the allegation(s), details of the potential outcome and a reminder of the employee's right to be represented. A copy of the Investigation Pack should also be enclosed.

The objective of the hearing is:

- To hear the evidence in respect of the allegation and the employee's response;
- To decide whether or not the allegation is substantiated; and
- If the allegation is substantiated, to determine the disciplinary sanction to be applied in light of the seriousness of the offence and having regard to previous relevant disciplinary history.

Following the hearing, the decision of the Panel will be confirmed to the employee in writing within 5 working days. This letter will also inform the employee of their right of Appeal and identify to whom any Appeal letter should be addressed.

Step 3 – Appeal (section 7)

An employee who wishes to Appeal must do so in writing to the person nominated in the disciplinary outcome letter, within 10 working days of the notification of the outcome of the disciplinary hearing. The Appeal letter must set out the grounds of the Appeal.

The Appeal hearing will be organised by the nominated person. The employee should be given at least 5 working days' notice in writing of the Appeal hearing. The employee must submit any additional papers/evidence to the Chair of the Appeal Committee no later than 5 days prior to the hearing. Papers will be prepared and sent to all parties.

The objective of the Appeal hearing is:

- To review the grounds of the Appeal in order to determine if the outcome of the hearing was correct; and
- If the decision is overturned, to determine what action is appropriate.

The decision of the Appeal Committee will be confirmed to the employee in writing within 5 working days.