



Disciplinary Procedure For The Clerk March 2014

PURPOSE AND SCOPE

- This procedure is designed to help and encourage the Clerk to achieve and maintain high standards of conduct whilst at work or representing the Council.
- The aim is to ensure consistent and fair treatment for all.
- It is the policy of this Council to endeavour to resolve minor misconduct or unsatisfactory performance through informal action. If informal action does not bring about an improvement, or the misconduct or unsatisfactory performance is considered to be too serious to be classed as minor, the Council will pursue formal action as set down in this procedure.
- This procedure is prepared in accordance with the dismissal and dispute resolution procedures as set out in the Employment Act 2008 and the ACAS Code of Practice APR 2009.
- In the case of a disciplinary matter relating to the Clerk, the Council will at its next Committee or Council meeting appoint a Disciplinary Committee of any three Councillors to represent the Council.

PRINCIPLES

- No disciplinary action will be taken against the Clerk until the case has been fully investigated. However in serious cases where there is possible danger to people or property immediate suspension pending investigation will take place.
- At every stage in the procedure the Clerk 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 formal stages the Clerk will have the right to be accompanied by a trade union representative or work colleague during the disciplinary interview.
- The Clerk will not be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty of dismissal without notice, with or without payment in lieu of notice, will be applied.
- The Clerk will have the right to appeal against any disciplinary penalty imposed.
- The procedure may be implemented at any stage if the Clerk's alleged misconduct warrants such action.

MISCONDUCT

The following list provides examples of misconduct which will normally give rise to formal disciplinary action:

- Unauthorised absence from work
- Persistent short-term and/or frequent absences from work without a medical reason
- Lateness for work or poor time keeping
- Inappropriate standard of dress
- Minor breaches of Health and Safety or other Society rules or procedures
- Failure to perform the job to the standard expected or in line with the job description/objectives
- Time wasting
- Disruptive behaviour
- Misuse of the council's facilities (e.g. telephones, computers, email or the internet)
- Refusal to carry out reasonable requests or instructions
- Smoking in unauthorised areas
- Failure to follow an agreed council procedure

This list is not exhaustive and offences of a similar nature will result in disciplinary action being instigated.

Persistent or frequent absence on medical grounds and long term sickness absence will be dealt with in accordance with the Absence Management and Staff Holidays Policy in the Staff Handbook.

GROSS MISCONDUCT

The following list provides examples of offences which are normally regarded as **gross misconduct**:

- Theft, fraud, deliberate falsification of records, or other acts of dishonesty
- Fighting, assault on another person
- Deliberate damage to property of the council, its workers or members
- Gross incompetence in the conduct of work
- Gross negligence which results in the council or employees being put at risk.
- Serious incapability through alcohol or being under the influence of illegal drugs
- Acts of incitement towards serious unlawful discrimination
- Serious acts of insubordination
- Serious breach of duty to keep information of the council, its service providers and its clients confidential
- Unauthorised entry to computer records
- Serious breach of the council's Security Policy, Health & Safety Policy, Confidentiality or e-mail and Internet Policy
- Any action, whether committed on or off the premises, that is likely to or does bring the council into disrepute

- Serious negligence which causes or might causes significant loss, damage or injury
- Accepting bribes or incentive payments from suppliers
- Unauthorised use of Council funds or credit
- Working with an external agency to provide information which would be detrimental to and cause commercial risk to the council.

This list is not exhaustive and other offences of a similar gravity will result in disciplinary action being instigated at gross misconduct level which carries a potential penalty of dismissal.

Gross Misconduct is generally any conduct which places extreme pressure on the mutual trust which exists in an employment relationship.

THE DISCIPLINE PROCEDURE

There are two separate stages to the discipline procedure:

- **Informal action.**
- **Formal action.**

The procedure is usually implemented at the informal action stage, but may be implemented at higher stages dependent on the seriousness of alleged misconduct.

INFORMAL ACTION

- Minor misconduct will be dealt with informally usually in a confidential one-to-one meeting between the Chairman of the Council or Chairman of the Working Practices Committee and the Clerk.
- It may be helpful to confirm in writing to the Clerk what improvement is required and how this needs to be done, how their performance or conduct will be reviewed and over what time period.
- If during the informal meeting it becomes apparent that the matter is more serious, the meeting should be adjourned immediately and the Clerk advised that it will be continued under the formal disciplinary action procedure.
- If the informal action has not brought about the necessary improvement, the Council may decide to implement the formal disciplinary action procedure.

FORMAL ACTION

Notification of Formal Action

- The Clerk should be advised in writing that the Council is considering formal disciplinary action and invite the Clerk to a disciplinary meeting.
- The letter should contain details about the alleged misconduct or poor performance and copies of any evidence to be presented at the meeting.
- The letter should include the time, date and venue for the disciplinary meeting and advise the Clerk that they have the right to be accompanied at the disciplinary meeting.
- The meeting should be held without unreasonable delay.
- For cases of gross misconduct, the Clerk may be suspended with full pay whilst an investigation is being carried out. It should be made clear to the Clerk that this suspension is not a disciplinary penalty.

Right to be Accompanied

- The Clerk has the right to be accompanied at a disciplinary meeting and can make a reasonable request for such a person to accompany them.
- The Clerk can ask any other employee or a trade union representative or an appropriately accredited official employed by a trade union to accompany them, to give support and help them prepare for the disciplinary interview. This right is enshrined in the 1999 Employment Relations Act. However it would not be reasonable to be accompanied by an employee whose presence might prejudice the meeting or who might have a conflict of interest.
- The companion can address the meeting, put and sum up the Clerk's case, respond on behalf of the Clerk to any views expressed at the meeting and confer with the Clerk.
- The companion cannot however answer questions on the Clerk's behalf or address the hearing if the Clerk does not wish him/her to, or prevent the Clerk explaining their case.

Procedure for the Disciplinary Meeting:

- All papers to be produced at the meeting by either the Council or the Clerk must have been made available in advance of the meeting.
- The Council will arrange, if possible, for another member of staff unconnected to the case to take notes during the meeting.
- The Disciplinary Committee will state the Council's case first and may call witnesses.
- The Clerk or their representative should then be able to put any questions they may have to the Disciplinary Committee.
- The Clerk or their representative should then put their case and may call witnesses.
- The Disciplinary Committee should then be able to put any questions they have to the Clerk or their representative.
- The Disciplinary Committee then sums up the Council's case.
- The Clerk or their representative sums up their case.
- The meeting will be adjourned for the Council to decide if disciplinary or other action is justified.

Re-Arranged Disciplinary Meeting:

- The Clerk who is unable to attend a disciplinary meeting should notify the Council in advance whenever possible and should arrange another meeting.
- The Council may make a decision in the Clerk's absence if he/she fails to re-arrange or attend the re-arranged meeting.
- If the Clerk's companion cannot attend the meeting on the proposed date, the Clerk can suggest another date so long as it is reasonable and not more than five working days after the date originally proposed by the Council. This five day limit may be extended by mutual agreement.

Decision – Outcome

- The outcome of the disciplinary meeting should be conveyed to the Clerk in writing without delay by the Disciplinary Committee.
- For poor performance, it should detail the performance problem, the improvement that is required, the timescale for achieving the improvement and a review date.
- For misconduct, it should state the nature of the misconduct and the change in behaviour required.
- If disciplinary action is to be taken, it should state the nature of the penalty and how long it will be kept on record.
- The letter should detail the right of appeal, if disciplinary action is to be taken.

Penalties

When considering applying a disciplinary penalty, the Council will have regard to:

- The penalty imposed in similar cases in the past.
- Whether standards of other employees are acceptable to ensure that the Clerk is not being singled out.
- The Clerk's disciplinary record, general work record, experience, position and length of service.
- Any special circumstances that may make it appropriate to adjust the severity of the penalty.
- Whether the proposed penalty is reasonable in view of all the circumstances.
- Whether any training or additional support is required.

There are three stages of penalty:

- Stage 1 – Written warning
- Stage 2 – Final written warning
- Stage 3 – Dismissal or other sanctions

Stage 1 - Written Warning

In the instance of a first complaint that conduct does not meet acceptable standards, a WRITTEN WARNING will be given to the Clerk by the Disciplinary Committee. He or she will be advised of:

- the reason for the warning,
- that it is the first stage of the disciplinary procedure,
- the improvement that is required and the timescales for achieving this improvement,
- that action under stage 2 will be considered if there is no satisfactory improvement,
- together with a review date and any support available (where applicable) and
- his or her right of appeal.

A copy of this written warning will be kept on file but it will be disregarded for disciplinary purposes after 12 months subject to satisfactory conduct.

Stage 2 – Final Written Warning

If there is still a failure to improve and conduct or performance is still unsatisfactory, or the misconduct is sufficiently serious, a FINAL WRITTEN WARNING will normally be given to the Clerk by the Disciplinary Committee. He or she will be advised of:

- the reason for the warning,
- that it is the second stage of the disciplinary procedure,
- the improvement that is required and the timescales for achieving this improvement,
- that action under stage 3 will be considered if there is no satisfactory improvement,
- together with a review date and any support available (where applicable) and
- his or her right of appeal.

A copy of this final written warning will be kept on file but it will be spent after 12 months (in exceptional cases the period may be longer) subject to satisfactory conduct.

Stage 3 – Dismissal or other sanctions

If conduct is still unsatisfactory and the employee still fails to reach the prescribed standards, or where the Council reasonably believes Gross Misconduct has occurred, the Clerk will be advised by the Disciplinary Committee:

- That DISMISSAL may result.
- Penalties at this stage may include dismissal with notice or summary dismissal (i.e. without any notice), Final Written Warning with/without demotion, loss of pay or loss of seniority.
- If dismissal is the outcome, the Clerk will be advised the date on which employment will terminate.
- In all cases the Clerk has a right of appeal.
- Very exceptionally, if an offence of Gross Misconduct is extremely serious the Clerk can be dismissed immediately without a meeting. In this situation a letter setting out reasons for dismissal would be sent to the Clerk offering the opportunity for an appeal hearing.

THE RIGHT OF APPEAL

- The Clerk has the right of appeal and should be advised of this fact by the Council.
- It can be exercised after any of the stages of disciplinary action for Misconduct/Poor Performance or Gross Misconduct.
- The Clerk who wishes to appeal against a disciplinary decision should inform the Council within five working days, in writing and giving reasons for the appeal.
- An appeal may be raised if the Clerk thinks the finding or penalty is unfair, new evidence has come to light or the Clerk thinks that the procedure was not applied properly.
 - The appeal will be heard by an Appeals Committee formed from three Councillors appointed at the next Committee or Council meeting, not including the three Councillors on the Disciplinary Committee, (unless they are all conflicted, then the appeal will be heard from three members of the Council not on the Working Practices Committee, or three representatives from SALC), who will view the evidence with impartiality.
- The Clerk will have the right to be accompanied at the appeal.
- The outcome of the appeal and reasons for it will be advised to the Clerk as soon as possible after the meeting and be confirmed in writing.
- At the appeal hearing any disciplinary penalty imposed will be reviewed but it cannot be increased.
- The decision taken at the appeal hearing will be final.

DISCIPLINARY PROCEDURES – LINKS TO GRIEVANCE PROCEDURES

Once the disciplinary process has commenced, the Clerk can still choose to exercise his/her right to raise an internal grievance about the employment relationship with the Council, staff or members. Disciplinary matters should be placed on hold whilst the grievance procedure is invoked and completed.

If the Clerk raises a grievance during a disciplinary meeting, the meeting shall be adjourned if the grievance relates to any member of the Disciplinary Committee holding the disciplinary meeting, bias is alleged in the conduct of the meeting or there is possible discrimination. The grievance will be fully investigated before the meeting is re-convened.

PAPERWORK

It is a requirement that all paperwork associated with the matter of a Disciplinary meeting is kept under the Confidential Information classes of both the Data Protection Act 1998 and the Freedom Of Information Act 2000.

A written record of the disciplinary procedure will be kept and a copy given to the Clerk, although certain information may be withheld in exceptional circumstance, e.g. to protect a witness.

The written record will include:

- The complaint against the Clerk.
- The Clerk's defence.
- Findings made and actions taken.
- Whether an appeal was lodged.
- The outcome of the appeal.
- Any grievances raised during the disciplinary procedure.

ABANDONMENT OF THE PROCEDURES UNDER THE ACT

It will be recognised as reasonable to discontinue proceedings where one party has made all reasonable attempts to comply but has been prevented from doing so.