



TODMORDEN TOWN COUNCIL

# DISCIPLINARY PROCEDURE

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## **1. Purpose and scope**

The aim of this procedure is to encourage improvement in individual conduct and performance. Discipline is not only essential for the conduct of the Todmorden Town Council's affairs, but also for the safety and well-being of all employees of the Council.

Disciplinary procedure will be considered in accordance with the principles of natural justice.

This procedure applies to all of the Council's employees.

This procedure does not apply:

- Following dismissal arising from the end date of fixed term or temporary contracts ending, including specific task based contracts
- Where dismissal arises from unsuitability on grounds of capability due to permanent ill health, where the Council's Managing Absence Policy will apply
- In the event of a redundancy

## **2. Principles**

Disciplinary situations will be managed as follows:

- The manager should have first spoken with the employee (unless of a serious or gross misconduct nature), and have sought to resolve the issue with the employee, during which time the employee should be made aware of the nature of the allegations.
- Where of a serious or gross misconduct nature or where the Manager has been unable to resolve this issue, but still regards it as matter for disciplinary action to be taken, he/she, should prepare a report for the Town Clerk to consider whether a disciplinary hearing is necessary.
- If the Town Clerk deems that a disciplinary hearing is appropriate the employee should be notified in good time when and where the Disciplinary Hearing is to take place and be invited in writing to attend.
- At the hearing, the Officer calling for the Disciplinary Hearing should present his/her report, whereupon the employee should be given full opportunity of putting forward his/her case before a decision is made.
- The allegations should be decided upon honestly, impartially and without bias.
- The investigation or hearing will be conducted by the Town Clerk and will be conducted in with fairness, impartiality in a timely manner and concluded as soon as is reasonable.
- At every stage of the procedure, the employee will have the right to be accompanied by either a Trade Union Official or a work colleague and The Council accompanied by its HR advisors, as appropriate.
- Where the Town Clerk is the direct line manager of the employee under investigation, the Chair of the Staffing Committee will assume the role and responsibilities as defined above for the Town Clerk.

## **3. The Formal Disciplinary Procedure**

Within this procedure discipline is considered within the following broad categories: Misconduct, Serious Misconduct and Gross Misconduct.

### 3.1 Gross misconduct

Gross misconduct is generally seen as misconduct serious enough to destroy the employment contract between the employer and the employee and make any further working relationship and trust impossible. It is normally restricted to very serious offences.

The following offences would normally be considered examples of Gross Misconduct:

- Violent or threatening behaviour, including inflicting, or attempting to inflict, bodily injury to another person whilst on the Town Council's premises or whilst acting in the course of employment;
- Theft, fraud, deliberate falsification of records, deceit or other dishonesty equivalent to stealing;
- Conviction of a criminal offence, which is likely to adversely affect the reputation or the interests of the Town Council or its employees;
- Wilful damage to and/or misuse of Town Council's property;
- Insubordination, insolence, the refusal to carry out reasonable instructions or any other act of improper behaviour;
- Being seriously incapacitated through the abuse of alcohol or drugs or being in the possession of illegal or controlled drugs (other than those prescribed by a doctor for medical reasons) or supplying or attempting to supply the same;
- Unlawful discrimination or harassment/bullying in the workplace;
- Acts of bullying or harassment via any form of social media, including Facebook, LinkedIn, Twitter, all other social networking sites, and all other internet postings, including blogs;
- Knowingly acting in breach of statutory rules and regulations applicable to employment;
- Being absent from work without authorisation;
- Deliberately misusing or disclosing the Town Council's confidential information without permission and in breach of obligations of confidence;
- Covertly recording on a mobile phone or any other device, conversations with councillors, colleagues, managers or suppliers;
- Serious breach of the Town Council's IT policy;
- Deliberately accessing internet sites containing pornographic, offensive or obscene material;
- Acts of money laundering;
- Acts of bribery;
- Causing loss, damage or injury through serious negligence;
- A serious breach of health and safety rules; or

- Deliberate falsification of records including pre-employment references.

The above list is not exhaustive and other serious offences may be regarded as Gross Misconduct.

An employee alleged to have committed an act of Gross Misconduct will be suspended on full pay, and if, after a Disciplinary Hearing, the allegation is substantiated as Gross Misconduct, the employee may be dismissed without notice.

### 3.2 Investigation

A thorough preliminary investigation must take place to establish the facts and satisfied a clear case for formal Disciplinary Action has been established before formal Disciplinary Action will be instigated.

Where the issue relates to employee performance or behaviour, the Line Manager will by way of evidential support have sought to find a way forward to improve performance before arriving at this stage.

Where the preliminary investigation concerns breaches of the Council's Standing Orders or Financial Regulations, or Scheme of Delegation, then the Chair of the Staffing Committee should be advised. In this case, it may be appropriate for the Council to seek the advice and potential involvement of the Council's Internal Auditor, and if necessary, to conduct the investigation.

The investigation will involve the Investigating Officer interviewing the employee concerned, who shall be given the opportunity if they wish to be accompanied by either a Trade Union Official or a work colleague. This Investigatory interview does not constitute formal Disciplinary Action.

### 3.3 Letter of Notification

When the preliminary investigations suggest that a Disciplinary Hearing is warranted, the employee will be notified in writing. The letter of notification will detail the alleged breach of discipline, inform the employee of the right to be accompanied, together with the date, time and place of the Hearing. The employee must be given at least five working days' notice of the date of the hearing, unless an earlier date is arranged by mutual agreement.

### 3.4 Disciplinary Hearing

At the Disciplinary Hearing, the alleged breach of discipline will be outlined and the employee will be given the opportunity to state their case and to comment on any facts or evidence which are to be taken into account in reaching a decision.

The intention of either side to bring witnesses must be notified to the other side not less than three days before the Hearing. The notification must state the number of witnesses and the subject area they are to be asked about. Names need not be supplied if there are concerns for the well-being of the witnesses.

If an employee fails to attend through circumstances beyond their control and unforeseeable at the time the meeting was arranged, the manager should arrange another meeting. If the employee fails to attend the second arranged hearing, it may be heard in the employee's absence and a decision taken as to what, if any, disciplinary action is to be taken. Employees should be forewarned in the letter advising of the rearranged meeting that this may happen.

### 3.5 First Written Warning

If after a Formal Verbal Warning has been given, the employee commits a further act of Misconduct then this may result in a Written Warning being issued to the employee. A Written Warning is also appropriate

where a first offence is considered to be too serious for a Formal Verbal Warning. A written warning will remain on the employee's personal file for a period of twelve calendar months from the date the employee is notified of the Warning.

### 3.6 Final Written Warning

The commission, after a Written Warning, of a further act of Misconduct or the commission of a first act of Serious Misconduct may result in a Final Written Warning being issued. A final written warning will remain on the employee's personal file for a period of twelve calendar months from the date the employee is notified of the Warning.

### 3.7 Dismissal

A further act of Misconduct other than Gross Misconduct will normally lead to Dismissal with appropriate notice. The employee may not be required to report for work during the notice period and may be placed on garden leave. Consideration may also be given to making a payment in lieu of notice.

If, after a Disciplinary Hearing, the allegation is substantiated as Gross Misconduct, the employee will be dismissed without notice or pay in lieu of notice.

**As an alternative to dismissal consideration may be given to extending the period of an existing Warning and/or imposing a penalty of Disciplinary Suspension without pay for a specified period of up to 10 working days and/or the withholding of the next increment payable and/or demotion and/or transfer.**

### 3.9 Letters of Confirmation

When a decision is made to take formal disciplinary action against an employee, that decision must be confirmed in writing for receipt by the employee within seven working days of the Disciplinary Hearing. The letter must outline the offence, detail the action taken and notify the employee of the Right of Appeal and how to do so.

## **4. General Conditions**

### Administrative Arrangements

During an investigation all matters shall remain confidential. This is to ensure that:

- any further action is not compromised through early release of information
- the rules of natural justice prevail and that if action is to be taken against an employee, the employee and his/her trade union representative are the first to be informed
- there is no risk of pre-judgement before the facts of the case are established

For members of the Council to be informed of the circumstances of a suspension, a clear "need to know" must be established under the Access to Information Act 1985.

**Before a decision is taken to suspend or dismiss an employee for any reason, the situation must be discussed with the Chair of the Town Council and Chair of the Staffing Committee so that the Council's position with regard to claims of unfair dismissal may be protected.**

### 4.1 Criminal Offences

The Town Clerk shall immediately report the circumstances of any suspected criminal offence connected with an employee's employment to the Chair of the Council, who may if satisfied that there are reasonable grounds for suspecting an offence, refer the case to the Police. Such a course of action shall not prevent related formal disciplinary action being taken against the employee, whether or not the Police have completed their investigations or criminal charges are made.

If an employee is charged with or convicted of a criminal offence outside work, which may have a bearing on their employment, the Town Clerk will consult with the Chair of the Council before any disciplinary action is taken against the employee.

#### 4.2 Breaches of the Council's Code of Conduct for Employees

All employees have an obligation under their contracts of employment to comply with the Council's Code of Conduct for Employees.

Managers should ensure that all employees are aware of their obligations under the Code. Any breach must be brought to the attention of the Town Clerk who may decide that Disciplinary Action should be initiated against the employee concerned.

#### 4.3 Breaches of the Council's Standing Orders/Financial Regulations

All employees have an obligation to comply with the Council's Standing Orders and Financial Regulations which set out the Standards and Procedures of the Council.

The Town Clerk should ensure that appropriate employees are aware of these Standing Orders and Financial Regulations as they relate to them. Any breach of Standing Orders or Financial Regulations must be brought to the attention of the Town Clerk, who may decide that Disciplinary Action should be initiated against the employee concerned.

#### 4.4 Right to be accompanied

All employees have the right to be accompanied by either a Trade Union Official or work colleague at all stages of this procedure. All communications notifying employees of Disciplinary or Appeal Panel Hearings should remind them of that right. If requested, reasonable facilities (e.g. access to a telephone) will be provided to allow the employee to contact their companion.

#### 4.5 Record of Formal Warnings

Written records of a warning will become inactive on the employee's file when the warning has expired and will be discounted in the consideration of further disciplinary action.

#### 4.6 Suspension

An employee may be suspended from duty:

- On full pay\* to enable investigations to be made where allegations of potential gross misconduct arise.
- On full pay\* where criminal investigations or procedures are being carried out, although the criminal investigations or procedures will not prevent the Council from taking formal Disciplinary Action.
- On full pay\* when it is in the interests of the employee or the Council for disciplinary or related reasons that the employee concerned should not be at work.

- Without pay for a specified period up to 10 working days as an alternative to dismissal after a Disciplinary Hearing or Appeal.

**\*Full pay for the purposes of this section is that level of remuneration calculated for holiday pay. Any period of suspension on full pay, which exceeds two weeks, shall be renewed at weekly intervals thereafter by the Town Clerk in consultation with the Chair of the Council and the Council's HR advisor if appropriate.**

#### 4.7 Counselling

Counselling of employees is inherent in the role of every line manager and may often be a more satisfactory method of resolving problems than disciplinary action. It should take the form of a discussion with the objective of encouraging and helping the employee to improve and the employee should fully understand the outcome. A note of this type of counselling should be kept for reference purposes. A counselling interview must not be allowed to turn into a formal disciplinary hearing to ensure that the employee enjoys the rights provided by this procedure (e.g. the right to be accompanied).

#### 4.8 Timing of Disciplinary Action

It is important, to ensure fair and effective application of these procedures, that counselling and/or the application of the formal disciplinary procedure is adopted as soon as possible after the Town Clerk becomes aware that misconduct may have occurred.

***Incidents of misconduct must not be allowed to accumulate, without management response, to the point where the situation becomes more serious than would have been the case had early and prompt action been taken.***

### **5. Capability/Work Performance/Quality**

There may be circumstances where the suitability of an employee to perform his/her job gives rise for concern on grounds of capability or where the quality of their work is below acceptable standards. In such circumstances, the procedure for dealing with Misconduct, as set out above shall apply. There may also be cases where an employee commits a single act of negligence or error where the actual or potential consequences are extremely serious so as to justify Dismissal for Gross Misconduct.

Employees should be left in no doubt about what is expected of them, particularly at the commencement of employment. The expected standards of work and performance should be explained to them and monitored by the use of accurate job descriptions, instructions, supervision and Appraisal Reviews. The consequences of any failure to meet the required standard should also be explained.

If an employee is issued with a formal or informal warning relating to their capability, work performance or work quality, the employee shall be notified in writing of the improvement required to establish acceptable standards, together with the period of time in which the improvement must be achieved. Where appropriate, consideration should be given to the provision of additional training, guidance or supervision to assist the employee in achieving the required improvement.

Before action is taken to dismiss an employee on grounds of capability, consideration shall be given to the availability of suitable alternative employment within the Council.

If the capability/work performance or quality issue is in relation to ill-health, managers should refer to the Managing Absence Policy and refer to the Council's HR advisor as appropriate.

## 6. Appeals process

After the Town Clerk has determined the outcome of a disciplinary hearing, the employee to which the disciplinary hearing pertains feels the hearing has not been conducted properly, or the determination is unfair, he/she may in writing appeal the decision.

### 6.1 Notification of an Appeal

If the employee decides to appeal against disciplinary action taken against them, they must do so in writing, stating the grounds and enclosing relevant documents, within 10 working days of the date of the letter of notification of the decision. The notice of appeal must set out the grounds of appeal and be sent to the Town Clerk who will convene the Appeals Panel.

### 6.2 Arrangement of Appeal Panel Hearings

The appeal will be heard by a panel of two members of the Staffing Committee to include either the Chair or Vice Chair Committee, which will be convened within 10 days of receipt of the appeal.

The employee shall be given, in writing, not less than five working days' notice of the hearing of an appeal, stating the date, time and location. The employee should be in attendance at the Hearing when the Appeal is being heard and has the right to be accompanied by either a Trade Union Official or a work colleague.

If the employee fails to attend, the Appeals Panel may, dependent on the circumstances, dismiss the Appeal, consider it in their absence or defer the Hearing to an alternative date.

The employee may also call witnesses on their behalf. If a witness is an employee of the Council, the Town Clerk must be given prior notice in order that the employee can be granted time off work. A similar process of fair hearing will be accorded at the Appeals Process as with the Disciplinary Hearing.

Where either party intends to produce documentary evidence at the Appeal, copies of those documents should be given to the other party in advance of the Hearing.

## 7. Procedure At Disciplinary Hearings

At a Disciplinary Hearing, a member of the Council's, HR advisor not previously involved in the case, will be present throughout the Hearing in an advisory capacity.

The procedure to be followed at the Hearing shall be as follows:

- (a) The Investigating Officer to put the case in the presence of the Employee and may call witnesses
- (b) The Employee to have the opportunity to ask questions of the Investigating Officer and/or the witnesses called on the evidence given

**Note: This part of the procedure must not be allowed to develop into presentation of the Employee's case.**

- (c) The Manager hearing the case to have the opportunity to ask questions of the Investigating Officer and witnesses

**Note: Where possible, witnesses should be questioned in turn by the parties and should withdraw on completion of the questioning unless specifically requested to remain.**

- (d) The Employee to put their case in the presence of the Investigating Officer and to call such witnesses as they wish
- (e) The Investigating Officer to have the opportunity to ask questions of the Employee and their witnesses
- (f) The Manager hearing the case to have the opportunity to ask questions of the Employee and their witnesses. (see note under (c) above)
- (g) The Investigating Officer may sum up their case
- (h) The Employee may sum up their case
- (i) The Investigating Officer, the Employee and all witnesses will withdraw whilst the Town Clerk hearing the case considers the case in private (the HR adviser if attending will remain)
- (j) The Town Clerk hearing the case may recall either party, with the other party in attendance, to clear points of uncertainty on evidence already given, then both parties will withdraw. The Town Clerk may, at his/her discretion recall witnesses, further witnesses, or adjourn the Hearing in order that either party may produce further evidence.

When the Town Clerk has reached a decision, the parties will return and he/she will announce the decision, which will be confirmed in writing within seven working days.

#### 7.1 Note on procedure for Appeals

7.1 The Appeals Process amounts to a rehearing of the earlier disciplinary/capability case. The Appeals Panel have the right to allow the appeal or to confirm or alter the decision against which the appeal is made (the Appeal Panel can reduce the original decision or uphold the original decision, they cannot increase the level of penalty). At the Hearing of an Appeal, a member of the Council's HR advisors, who was not present at the initial disciplinary hearing, will be present throughout the Hearing in an advisory capacity.

## 8. Flow Chart of Disciplinary Procedure

