

DISCIPLINARY PROCEDURE

TOWN COUNCIL STAFF

JANUARY 2023

**BASED ON A DRAFT DOCUMENT, PROVIDED BY PRETTYS SOLICITORS AND
THE SUFFOLK ASSOCIATION OF LOCAL COUNCILS**

CONTENTS

CLAUSE

1.	Policy statement.....	1
2.	Who is covered by the procedure?.....	1
3.	What is covered by the procedure?.....	1
4.	Confidentiality.....	2
5.	Investigations.....	2
6.	Criminal charges.....	3
7.	Suspension.....	3
8.	Notification of a hearing.....	3
9.	The right to be accompanied.....	4
10.	Procedure at disciplinary hearings.....	4
11.	Disciplinary penalties.....	5
12.	The effect of a warning.....	6
13.	Appeals against disciplinary action.....	6

1. POLICY STATEMENT

- 1.1 The aims of this Disciplinary Procedure and its associated Disciplinary Rules are to set out the standards of conduct expected of all Town Council staff and to provide a framework within which managers can work with employees to maintain satisfactory standards of conduct and to encourage improvement where necessary.
- 1.2 It is our policy to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond before taking any formal action.
- 1.3 This procedure does not form part of any employee's contract of employment and it may be amended at any time. We may also vary this procedure, including any time limits, as appropriate in any case.

2. WHO IS COVERED BY THE PROCEDURE?

The procedure applies to all employees regardless of length of service. It does not apply to agency workers or self-employed contractors.

3. WHAT IS COVERED BY THE PROCEDURE?

- 3.1 This procedure is used to deal with misconduct. It does not apply to cases involving genuine sickness absence, proposed redundancies or poor performance. In those cases, reference should be made to the appropriate policy or procedure.
- 3.2 Minor conduct issues can often be resolved informally between you and your line manager. These discussions should be held in private and without undue delay whenever there is cause for concern. Where appropriate, a note of any such informal discussions may be placed on your personnel file but will be ignored for the purposes of any future capability hearings. In some cases, an informal verbal warning may be given, which will not form part of your disciplinary records. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).
- 3.3 You will not normally be dismissed for a first act of misconduct, unless we decide it amounts to gross misconduct or you have not yet completed your probationary period.

- 3.4 If you have difficulty at any stage of the procedure because of a disability, you should discuss the situation with your line manager as soon as possible.

4. CONFIDENTIALITY

- 4.1 Our aim is to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.
- 4.2 You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.
- 4.3 You will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against you, unless we believe that a witness's identity should remain confidential.

5. INVESTIGATIONS

- 5.1 The purpose of an investigation is for us to establish a fair and balanced view of the facts relating to any disciplinary allegations against you, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from you and any witnesses, and/or reviewing relevant documents. We will appoint a Town Councillor who is a member of the Staffing and Employment Committee to investigate and we will set out a provisional timetable for the investigation, which will be communicated to all parties. The investigation will be thorough, impartial and objective. We reserve the ability to appoint an independent third party to investigate the allegations made.
- 5.2 Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.
- 5.3 You do not normally have the right to bring a companion to an investigative interview. However, we may allow you to bring a companion if it helps you to overcome any disability, or any difficulty in understanding or other issues.
- 5.4 You must co-operate fully and promptly in any investigation. This will include informing us of the names of any relevant witnesses, disclosing any relevant documents to us and attending investigative interviews if required.

6. CRIMINAL CHARGES THIS SECTION TO BE DISCUSSED IF REQUIRED.

6.1 Where your conduct is the subject of a criminal investigation, charge or conviction we will investigate the facts before deciding whether to take formal disciplinary action.

6.2 We will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where you are unable or have been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, we may have to take a decision based on the available evidence.

6.3 A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if we consider that it is relevant to your employment.

7. SUSPENSION

7.1 In some circumstances we may need to suspend you from work. The suspension will be for no longer than is necessary to investigate the allegations and we will confirm the arrangements to you in writing. While suspended you should not visit our premises or contact any of our clients, customers, suppliers, contractors or staff, unless you have been authorised to do so by investigating Councillor (see para 5.1)].

7.2 Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. You will continue to receive your full contractual salary and benefits during the period of suspension.

8. NOTIFICATION OF A HEARING

8.1 Following any investigation, if we consider there are grounds for disciplinary action, you will be required to attend a disciplinary hearing. We will inform you in writing of the allegations against you, the basis for those allegations, and what the likely range of consequences will be if we decide after the hearing that the allegations are true. We will also include the following where appropriate:

- (a) a summary of relevant information gathered during the investigation;
- (b) a copy of any relevant documents which will be used at the disciplinary hearing; and
- (c) a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality.

8.2 We will give you written notice of the date, time and place of the disciplinary hearing. The hearing will be held as soon as reasonably practicable, but you will be given a reasonable amount of time to prepare your case based on the information we have given you.

9. THE RIGHT TO BE ACCOMPANIED

9.1 You may bring a companion to any disciplinary hearing or appeal hearing under this procedure. The companion may be either a trade union representative or a colleague. You must tell Hearing organiser (see para 5.1) who your chosen companion is, in good time before the hearing, not later than 4 working days before the hearing or appeal.

9.2 A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

9.3 If your choice of companion is unreasonable we may require you to choose someone else, for example:

- (a) if in our opinion your companion may have a conflict of interest or may prejudice the hearing; or
- (b) if your companion works at another site and someone reasonably suitable is available at the site at which you work; or
- (c) if your companion is unavailable at the time a hearing is scheduled and will not be available for more than five working days.

9.4 We may, at our discretion, allow you to bring a companion who is not a colleague or union representative (for example, a member of your family) where this will help overcome a disability, or where you have difficulty understanding.

10. PROCEDURE AT DISCIPLINARY HEARINGS

10.1 If you or your companion cannot attend the hearing you should inform us immediately and we will arrange an alternative time. You must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If you fail to attend without good reason, or are persistently unable to do so (for example for health reasons), we may have to take a decision based on the available evidence.

10.2 The hearing will be chaired by an elected member of the Staffing and Employment Committee. You may bring a companion with you to the disciplinary hearing (see paragraph 9).

- 10.3 At the disciplinary hearing we will go through the allegations against you and the evidence that has been gathered. You will be able to respond and present any evidence of your own. Your companion may make representations to us and ask questions, but should not answer questions on your behalf. You may confer privately with your companion at any time during the hearing.
- 10.4 You may ask relevant witnesses to appear at the hearing, provided you give us sufficient advance notice to arrange their attendance. You will be given the opportunity to respond to any information given by a witness. However, you will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, we decide that a fair hearing could not be held otherwise.
- 10.5 We may adjourn the disciplinary hearing if we need to carry out any further investigations such as re-interviewing witnesses in the light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 10.6 We will inform you in writing of our decision and our reasons for it. Where possible we will also explain this information to you in person.

11. DISCIPLINARY PENALTIES

- 11.1 The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. We aim to treat all employees fairly and consistently, and a penalty imposed on another employee for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits.
- 11.2 **Stage 1 - First written warning.** It will usually be appropriate for a first act of misconduct where there are no other active written warnings on your disciplinary record.
- 11.3 **Stage 2 - Final written warning.** It will usually be appropriate for:
- (a) Misconduct where there is already an active written warning on your record; or
 - (b) Misconduct that we consider sufficiently serious to warrant a final written warning even though there are no other active warnings on your record.
- 11.4 **Stage 3 - Dismissal.** It will usually only be appropriate for:
- (a) Any misconduct during your probationary period;

- (b) Further misconduct where there is an active final written warning on your record; or
- (c) Any gross misconduct regardless of whether there are active warnings on your record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal).

11.5 **Alternatives to dismissal.** In some cases we may at our discretion consider alternatives to dismissal. These will usually be accompanied by a final written warning. Examples include:

- (a) Demotion.
- (b) Transfer to another department or job, if one is available.
- (c) A period of suspension without pay.
- (d) Loss of seniority.
- (e) Reduction in pay.
- (f) Loss of future pay increment or bonus.
- (g) Loss of overtime.

12. THE EFFECT OF A WARNING

12.1 Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that active period.

12.2 A first written warning will usually remain active for six months from the date the warning is given and a final written warning will usually remain active for twelve months. [In exceptional cases verging on gross misconduct, a final written warning may state that it will remain active indefinitely.] Your conduct may be reviewed at the end of a warning's active period and if it has not improved sufficiently we may decide to extend the active period.

12.3 After the active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

13. APPEALS AGAINST DISCIPLINARY ACTION

13.1 If you feel that disciplinary action taken against you is wrong or unjust you should appeal in writing, stating your full grounds of appeal, to Chair of S&E Committee within one week of the date on which you were informed of the decision.

- 13.2 If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if your appeal is successful you will be reinstated with no loss of continuity or pay.
- 13.3 If you raise any new matters in your appeal, we may need to carry out further investigation. If any new information comes to light we will provide you with a summary including, where appropriate, copies of additional relevant documents and witness statements. You will have a reasonable opportunity to consider this information before the hearing.
- 13.4 We will give you written notice of the date, time and place of the appeal hearing.
- 13.5 The appeal hearing may be a complete re-hearing of the matter or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at our discretion depending on the circumstances of your case. In any event the appeal will be dealt with as impartially as possible.
- 13.6 The appeal hearing will be conducted impartially by the Town Council's Appeals Panel comprising members who have not been previously been involved in the case. You may bring a companion with you to the appeal hearing (see paragraph 9).
- 13.7 We may adjourn the appeal hearing if we need to carry out any further investigations in the light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.
- 13.8 Following the appeal hearing we may:
- (a) confirm the original decision;
 - (b) revoke the original decision; or
 - (c) substitute a different penalty.
- 13.9 We will inform you in writing of our final decision as soon as possible. Where possible we will also explain this to you in person. There will be no further right of appeal.

AMENDED DECEMBER 2020