

Crowle & Ealand Town Council

Disciplinary Policy



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Introduction

This document is designed to help maintain the standards of conduct expected by the Council, to ensure fairness and consistency when dealing with allegations of misconduct. For comprehensive guidelines and legislation, please refer to the ACaS Code of Practice and the Chartered Institute of Personnel and Development (CIPD) guidance on appropriate standards to achieve early resolution to problems.

Any breach in standards of conduct will be addressed in a fair, objective and effective manner. This procedure is not to be used purely as a punitive measure, but as an aid towards good performance and clear understanding for all parties. There are a number of policies in place designed to develop good working relationships between employees and the Council. The purpose of this document is to set down a mechanism to enable the Council to resolve issues of discipline.

All disciplinary issues will be dealt with sensitively, with due respect for privacy for all parties involved and confidentially during and after the matter is resolved. At all meetings a record will be made and a copy sent to the employee.

Code of Practice

The Code of Practice takes no account of the status of the Town Council as the employer and the fact that no single Councillor may act as the employer. It is critical therefore that whilst the Council will wish to engage with the principles of the Code, in terms of early resolution of conflict, a sound and accountable structure must be in place to satisfy the legislative governance standards expected of the Town Council. The appointment of a committee of minimum three members to handle disciplinary issues is key to the success of this policy, as is the principle that an external third party may have to be appointed as investigator. The procedures listed in this document set out the formal process. It is expected that at all stages of the process the person or committee investigating the disciplinary issue will want to meet all involved parties and to discuss with them the issues involved as quickly as possible.

Principles

This procedure is based upon the following core principles:

- No disciplinary action will be taken against an employee until the case has been fully investigated unless there is no dispute between the parties as to the facts of the case.
- The employee will be advised of the nature of the complaint against her/him and, at every stage of the procedure, will be given the opportunity to state her/his case before any decision is made.
- The employee has a statutory right to be accompanied to disciplinary hearings and appeals by a trade union representative or work colleague. The Council will consider other appropriate persons if the employee is the sole employee; where it would be inappropriate for another employee to act in the capacity or where the employee is not a member of a

trade union. In such circumstances the Council will take advice from the relevant authority.

- No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty shall be summary dismissal (i.e. dismissal without contractual notice or payment in lieu of notice).
- An employee has the right of appeal against any disciplinary penalty imposed.
- The procedure may be commenced at any stage if the employee's alleged misconduct warrants such action.
- Where it is determined that there has been a breach of conduct resulting in an oral or written warning, advice will be given as to what action the employee must take to avoid further disciplinary action. Future action may involve counselling or mentoring to assist the employee.

The Procedure

Investigation

No disciplinary action will be taken until the case has been fully investigated. A thorough investigation must be undertaken to determine whether there is a case to answer. The investigation will normally be conducted by the Disciplinary Committee or by an external investigating officer, appointed by the Council. Where there is no dispute between parties about the facts, it may not necessarily be appropriate to carry out an investigation.

Suspension

In some instances it may be necessary to suspend the employee concerned whilst the investigation is conducted. Authority to suspend rests with the Disciplinary Committee. Suspension should not be regarded as a form of punishment or a finding of guilt. It is intended to enable a thorough investigation to take place, particularly where the allegation/incident is serious and the continued presence of the employee is deemed to be inappropriate until the matter can be resolved.

Suspension will always be with contractual pay, and written confirmation of the reason for suspension and its likely duration will be provided to the employee as soon as is reasonably practicable. Such notification will be sent by the Disciplinary Committee and will indicate any additional restrictions on access to any premises, and/or contact with any specific employees, Councillors, members of the public, officers in other authorities, customers, clients, partners or volunteers for the period of the suspension. The restrictions must be justifiable in the circumstances of the case.

As an alternative to suspension, the Council may choose to temporarily transfer the employee under investigation.

The Hearing

The employee shall be advised of the nature of the complaint against her/him in writing prior to the hearing and will be given the opportunity to state her/his case before any decision is made. If following an investigation it has been decided that there is a case to answer, the employee will be notified in writing of:

- the date, time and venue of the hearing
- details of the allegations being made
- copies of any documents that will be used as evidence during the course of the hearing
- the details of any witnesses/witness statements that will be used as evidence during the course of the hearing
- their right to be accompanied

Notification will be sent by the Disciplinary Committee and will give the employee reasonable notice. Where necessary, an alternative date may be agreed by both parties.

The employee may make written submissions to the hearing and may request the appearance of witnesses, details of which must be received by the Disciplinary Committee in reasonable time to be made available to other parties prior to the hearing.

Where no disciplinary action is taken following a hearing, all papers shall be destroyed immediately.

Members of the Disciplinary Committee will not be involved in any subsequent appeal.

If an employee fails to attend a hearing without a legitimate reason, the hearing may proceed in her/his absence and will advise the employee of the outcome in writing within 48 hours of the meeting or as soon as is reasonably practicable.

The Disciplinary Committee will consist of three members of the Council.

Hearing Format

Guidance on the format of a disciplinary hearing is given in Appendix 1.

Stages of Disciplinary Action

Oral Warning

- If there is a breach in conduct, the employee will be given a formal oral warning. She/he will be advised of the reason for the warning, that it is the first stage of the disciplinary procedure
- A further breach in conduct may result in further disciplinary proceedings being initiated (and of her/his right of appeal.) A brief note of the warning will be placed on the personnel file and will remain active for a period of up to six months when it will be removed from the records

First Written Warning

If the offence is serious enough in itself, or is a repetition of a matter on which an oral warning has been given in the previous three months, a written warning will be given. This will give details of the complaint, the improvement required and the timescale. It will warn that further action will be considered if there is no satisfactory improvement or if there is a further breach in conduct and will

advise of the right of appeal. The warning will remain active for a period of six months after which time it will be removed from the records.

Final Written Warning

If there is further misconduct or continuing failure to improve performance to an acceptable level within the six months since a first written warning was issued, or if the misconduct or performance is serious enough to warrant one written warning only a final written warning will be given. This will give details of the complaint, will warn that dismissal will result if there is no satisfactory improvement or a further breach in conduct and will advise of the right of appeal. The warning will remain active for a period of twelve months after which time it will be removed from the records.

Dismissal

If the employee has failed to reach the prescribed standards during the twelve months since a final written warning was issued, dismissal will normally result. Only the appointed committee can take a decision to dismiss. The employee will be provided with written reasons for dismissal as soon as is reasonably practicable, the date on which employment will terminate and their right of appeal. As an alternative to dismissal, an employee may be demoted or transferred to another post with any consequent loss of pay and benefits.

In all cases of warnings, written confirmation of the decision and the findings of the Disciplinary Committee will be confirmed in writing to the employee as soon as is reasonably practicable.

Right to be accompanied

Disciplinary proceedings will not be initiated against an employee who is also a recognised trade union representative until the matter has been discussed with a full time officer of the appropriate union.

As stated in 6.1 above, the employee has a statutory right to be accompanied to disciplinary hearings and appeals by a trade union representative or work colleague. The Council will consider other appropriate persons if the employee is the sole employee; where it would be inappropriate for another employee to act in the capacity or where the employee is not a member of a trade union. In such circumstances the Council will take advice from ERNLLCA.

Criminal Offences

Where an employee has been charged with or convicted of a criminal offence that occurred outside of their employment, the disciplinary procedure will only be initiated if there are direct implications with regard to work conduct or performance.

If it is thought that disciplinary action may be warranted, then the normal procedure will be followed wherever this is practicable.

It is not necessary to await the outcome of any external investigation or prosecution before deciding on fair and reasonable action. The police will not normally be asked to conduct any investigation on behalf of the Council where it is possible to use the investigatory services of another body e.g. the Audit Commission.

Appeals

The Council will appoint an Appeals Panel

An employee has the right to appeal against any disciplinary penalty imposed.

Appeals against disciplinary warnings are not intended to simply be a rehearing of the case. The aim of an appeal is to review the original decision in light of:

- The emergence of new evidence that was not available at the time of the original hearing
- A claim that the disciplinary procedure was not correctly followed
- The employee's belief that the level of disciplinary sanction was unfair/unreasonable in the circumstances

Appeals must be made in writing to the Mayor within ten working days of the employee receiving written confirmation of the outcome of the hearing.

The employee and the Chair of the Disciplinary Committee panel may make written submissions, including witness statements, to the hearing. All such documents/evidence to be submitted for consideration at the appeal shall be sent to the Mayor no later than five working days before the hearing and shall be copied to other parties concerned.

Appeals against various stages of disciplinary action shall be heard by a meeting of the Council, minus the members who have been part of the appointed committee or who have been witnesses at an earlier part of the process.

In considering whether an appeal should be allowed, the Appeals Panel shall take into account the following:

- The extent to which the appeal is based on a reiteration of the detail of the hearing
- The relevance of any new evidence that may be available
- The relevance of any alleged defects in the implementation of the procedure
- Whether the decision that had been made was fair and reasonable in the light of the evidence available
- The extent to which due weight has been given to evidence
- The extent to which full opportunity for proper questioning of those present including witnesses was allowed
- Whether the employee has been formally represented and whether they have been able to present their case appropriately
- The overall conduct of the hearing

Standards of Conduct and Performance

This section is not intended to provide an exhaustive list of rules, but is rather a source of guidance on the sort of breaches in conduct that may result in disciplinary action.

- persistent poor timekeeping/attendance

- unauthorised absence
- smoking in non-smoking areas
- being under influence/misuse of alcohol/drugs/other substances whilst on duty
- harassment/bullying
- contravention of equality policy
- use of organisation's time/resources/property for personal business activities
- failure to follow a reasonable instruction/insubordination
- failure to follow policies/procedures
- failure to comply with reasonable instruction

The following examples will normally be classed as gross misconduct (i.e. acts which fundamentally breach the employment contract) and may therefore result in summary dismissal:

- theft/fraud/deliberate falsification of records or making false claims
- wilful damage to organisation's property
- physical assault on another person
- incapacity for work due to being under the influence of alcohol, drugs or other substances
- gross insubordination
- serious negligence which results in unacceptable loss, damage or injury
- serious breach of legislation or provisions of the organisation's policies.

No set of disciplinary rules can cover all circumstances that may arise; moreover the rules required will vary according to particular circumstances such as the type of work, working conditions and so on. Employees will be given regular training and guidance to identify what is expected within the workplace.

All employees should be made aware of the likely consequences of breaking rules and in particular they should be given a clear indication of the type of conduct that may warrant summary dismissal.

Review

This policy and procedure will be subject to a general review on or before the review date shown below. This policy will also be reviewed as frequently as is needed in order to meet changes to operational or business practice or to meet legislative or statutory requirements.