



# **BRAUNTON PARISH COUNCIL**

## **Disciplinary Policy**

### **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. In accordance with the Employment Rights Act 1996, Human Rights Act 1998 and the ACAS Code of Practice on Disciplinary Procedures this procedure sets out the framework for resolving issues relating to misconduct and unsatisfactory performance.

This procedure will apply to all employees unless it conflicts with contractual or statutory requirement, which will take 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 a serious first time breach of disciplinary rules or gross misconduct the formal procedure should be actioned immediately.

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

At every stage in the procedure the employee 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.

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 day's 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.

### **3. Roles and Responsibilities**

Where a minor disciplinary issue arises the line manager or the Clerk will normally consider the matter and will resolve it if they can without recourse to the formal procedure.

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 Clerk who will then be responsible for nominating an Investigating Officer. If the misconduct relates to the Clerk this should be referred to the Personnel Committee.

The Officer who carries out an investigation should not participate in any subsequent decision to take action under the procedure. Likewise, the Officer hearing the case should not be involved in the investigation beforehand. It is important that respective roles are identified at an early stage so that those roles are not compromised. The Investigating Officer need not be the employee's supervisor or line manager although this would normally be the case.

Only the Clerk has the right to suspend an employee and provide verbal or written warnings for minor misconduct.

### **4. Representation**

Employees have the right to representation at hearings and appeals relating to any stage of the formal procedure. This can be a trade union representative, non-union employee representative or a work colleague.

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 & Guidance**

Where a minor breach of acceptable/ established standards of conduct occurs which does not justify formal disciplinary action, the Line Manager will advise the employee concerned of the conduct or 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 where appropriate additional training to achieve the necessary standards. Representation will not normally be appropriate. Managers should make a note of such informal advice and guidance and should set out in writing 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.

However, the formal procedure will apply when: -

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

## **6. The Formal Procedure**

### **6.1 Suspension**

In some circumstances the 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; 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. The period of suspension should not normally last for more than 20 working days, however where necessary this period can be extended.

The decision whether suspension is necessary can be reviewed at anytime in the disciplinary process.

### **6.2 Investigation**

Before any decision can be made about whether or not a disciplinary hearing is necessary, an investigation must take place. The Clerk (or the Personnel Committee, in relation to matters concerning the Clerk) should appoint an appropriate investigating officer, who could be an external adviser, who will report back with their findings and make recommendations as to whether a disciplinary hearing should be convened.

The responsibilities of the Investigating Officer are to collect evidence by interviewing any relevant witnesses and gathering all documentation. An Investigatory Interview should be held with the employee concerned whereby the employee is given 5 working days notice, in writing, outlining the general nature of the allegation. The purpose of the interview is to present the findings of the investigation to the employee and allow them to answer or shed light on the potential allegations to assist the investigating officer to decide if he or she should recommend a disciplinary hearing and/or 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 Clerk (or Personnel 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;
- arrange a disciplinary hearing.

### **6.3 Arranging a Hearing**

If, following the recommendations of the Investigating Officer, the Clerk concludes that a hearing is required then the necessary arrangements should be made by the Clerk. The employee should be given at least 5 working days notice in writing. The letter should include a clear written statement of the allegation and should enclose any documentary evidence being relied upon and a reminder of the employee's right to be represented.

The Investigating Officer is responsible for presenting the case and making arrangements for any witnesses that he or she relies upon, to attend the meeting.

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 Investigating Officer at least 3 working days prior to the hearing.

### **6.4 Conducting a hearing**

The Panel for a hearing would normally comprise of the Clerk (or three members of the Personnel Committee, in relation to matters concerning the Clerk) and an independent HR representative could be asked to attend to support the panel, as appropriate.

The objective is: -

- to hear the evidence in respect of the allegation, the employee's response and to decide whether the allegation is substantiated or not;
- if the allegation is substantiated, 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: -

- introduce Panel members and specify their roles;
- clarify the purpose of the hearing and state the allegation;
- presentation of the case by the investigating officer with witnesses called as necessary;
- questions by employee and/or their representative;
- questions by the Panel;
- employee and/or their representative to state their case with witnesses called as necessary;
- questions from investigating officer;
- questions from Panel;

- investigating officer to sum up;
- employee/representative to sum up;
- panel adjourn to make their decision;
- hearing reconvened and the employee/representative 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 must 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;
- the employee's right to appeal.

### 6.5 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 1	Oral Warning	For a minor offence, a formal 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	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	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	For an act or acts of misconduct, other than gross misconduct, by an employee who is under a final written warning. The employee will be liable to dismissal with notice or pay in lieu of notice.
	Dismissal without notice	In cases where gross misconduct is established the employee will be liable to summary dismissal, that is without notice or pay in lieu of notice.

## **6.6 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 and written warnings live for 12 months from the date of the disciplinary hearing. Final written warnings will be live for 2 years.

## **6.7 The Right of Appeal**

An employee has the right to appeal against disciplinary action resulting in a warning or their dismissal. Three members of the Appeal Committee will hear the appeal, providing that they have had no previous involvement in the matter, and an independent HR representative could be asked to attend to support the panel, as appropriate.

An employee who wishes to appeal must do so in writing to the Clerk (or Chair of the Personnel Committee, in relation to matters concerning the 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;
- a failure to adhere to the disciplinary procedure.

## **6.8 Arranging an Appeal**

The date and time of the appeal will be organised by the Clerk (or Chair of the Personnel Committee, in relation to matters concerning the 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, submit papers for submission to the appeal five days prior to the hearing

## **6.9 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 Panel will have regard to seriousness of the offence and any previous relevant disciplinary history.

The procedure to be followed is:-

- the appellant puts their case including calling any witnesses;
- the Manager has the opportunity to ask questions of the appellant and witnesses;
- the Manager (Chair of the previous hearing) who took the disciplinary action puts their case for having done so, which may include calling any witnesses;
- the appellant has the opportunity to ask questions of the Manager and witnesses;
- the Appeals Panel has the opportunity to ask questions of both parties and witnesses;
- both parties have the opportunity to sum up should they wish to do so. No new information should be introduced at this stage and the appellant should have the opportunity to sum up last;
- the appeal is adjourned to allow the Panel to reach a decision;
- the appeal is reconvened and both parties are informed of the decision;
- the Appeals Panel write to both parties informing them of their decision within 5 working days.

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

## **6.10 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.

## **6.11 Disciplinary Rules**

It is difficult to define all the acts of misconduct which may lead to disciplinary action. As a general principle a test of reasonableness would be applied, that is to say, 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 which are unacceptable and which may lead to disciplinary action. The list is not exhaustive and other behaviour not listed may lead to disciplinary action when necessary.

- 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 use or unauthorised use of e-mail, IT or telephone facilities
- Being under the influence of alcohol or drugs

## **6.12 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 and occurs when the employment relationship between the Council and employee, and the trust which is inherent in that, is irrevocably broken.

Again the list 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
- 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

## **6.13 Training**

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

## **CAPABILITY PROCEDURE**

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### **Introduction**

This procedure should be used primarily for supporting, enhancing and improving the performance of employees. In accordance with the Employment Rights Act 1996, Human Rights Act 1998 and the ACAS Code of Practice on Disciplinary Procedures this procedure sets out a framework for resolving issues relating to poor performance. The procedure aims to ensure that consistent and fair treatment is given to individuals.

### **Scope**

Where there are issues of misconduct or of negligence these should be dealt with under the Disciplinary Procedure. In addition for matters of sickness, disability or ill health the Absence Management Policy should be used.

### **General Principles**

- The Procedure is not a substitute for good management practices and should only be invoked when initial attempts to improve performance have been unsuccessful following discussions between the employee and their manager.
- The employee must be given at least 5 working days notice of the requirement to attend a formal review meeting or an appeal.
- The employee has the right to be represented at formal review meetings or appeals.
- In the event of a formal warning or a dismissal the employee has the right of appeal.

### **Related Procedures**

When using the procedure it may be necessary to refer to the contents of other agreed documents such as:-

- The Equal Opportunities Policy
- The Grievance Procedure
- The Absence Management Policy
- Other conditions set out in the Staff Handbook

### **Representation**

Employees have the right to representation at hearings and appeals relating to any stage of the formal procedure. This can be a trade union representative, non-union employee representative or a work colleague.

Representatives can take an active part in review meetings.

## **Action against a Trade Union Official**

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.

## **The Informal Procedure**

The Clerk (or Chair of the Personnel Committee, in relation to matters concerning the Clerk) should deal with minor issues of poor performance in the first instance.

A meeting with the employee to discuss poor performance should be arranged and any problems or areas for concern should be raised by the Clerk. Appropriate support and training should be offered to assist the individual in meeting the required standards in the future. Realistic targets should be agreed with the individual and future expectations made clear by the Clerk. The Clerk should record the points discussed in the meeting and confirm this in writing to the employee along with the agreed plan to achieve acceptable levels of performance. A review meeting within 2 months should be arranged to assess whether targets have been met and whether performance is satisfactory.

In most cases these meetings should provide sufficient guidance, support and clarification of standards to rectify the situation.

However, the formal procedure will apply when:-

- previous informal advice or guidance has proved ineffective;
- The performance is so poor that informal discussions are unlikely to help.

## **The Formal Review**

If informal discussions have proved unsuccessful in raising performance levels to the standards set by the Clerk then the formal procedure will be invoked. There are three stages to the formal procedure and the employee will have the right of representation at each stage.

During each stage the employee's performance will be monitored closely. The method of doing this will be made clear to them at the conclusion of each review meeting.

### **Stage 1: The Capability Review**

The Capability Review should build on the informal discussions. It should be sufficiently specific for the employee to know exactly what it is about their performance that is unsatisfactory and how they can improve to the required standard. The Clerk (or Chair of the Personnel Committee, in relation to matters concerning the Clerk) will carry out the Review.

The review has 4 main purposes:-

i) To allow the Clerk to discuss with the employee:

- the standards of work required;
- what improvement is necessary;
- how the employee can be helped to achieve them;
- how improvement will be assessed and the timescale which must be reasonable.

ii) To allow the employee to:

- obtain a clear understanding of what is expected of them;
- give an explanation or comment on their work;
- give their views on how the problem can best be tackled.

iii) To allow the Clerk and the employee to explore other options:

- additional instruction, training or personal development activity;
- referral to occupational health which may involve alternative action under the Council's Absence Management Policy.

iv) To make clear to the employee

- the timescale for improvement;
- how and by whom their work will be monitored through the review period;
- the consequences if their work does not improve or if improvement is not maintained.

Ideally, standards of performance should be agreed between the Clerk and employee. However, in the absence of such an agreement, the Clerk must satisfy himself or herself that any targets set are reasonable and non-discriminatory. If training has already been given then its effectiveness should be reviewed and any further training and support agreed.

If, at the conclusion of the review the Clerk is satisfied that there is a shortfall in performance, the employee should be issued with a formal warning and an action plan, including timescales, to achieve. It should also be made clear that failure to achieve the action plan will lead to the next stage of the formal procedure. The length of time given to improve will depend on the nature of the job and the performance gap, but in normal circumstances it should not be more than 3

months. The Clerk should confirm the outcome of the meeting in writing to the individual within 5 working days.

## **Stage 2 – The Capability Review**

If the employee fails to achieve the standards and/or the timescales set out in the action plan then Stage 2 of the procedure is invoked. This involves a further review, based on the same structure as that for Stage 1.

Stage 2 of the Capability Review will be conducted by the Clerk (or Chair of the Personnel Committee, in relation to matters concerning the Clerk). If it is concluded that there is still a performance issue to be addressed a further formal warning should be issued and action plan giving details of the standards of performance required and the timescales within which these must be achieved. The employee should be reminded that if the action plan is not achieved, then Stage 3 will be invoked. It needs to be made clear that Stage 3 may result in a decision to dismiss the employee. Again, the length of time given to improve will depend on the nature of the job and the performance gap, but in normal circumstances should not be more than 3 months. A letter to confirm the outcome of the meeting should be sent to the employee within 5 working days, it should also explain the employees right to appeal against any warning issued.

## **Stage 3 – The Final Capability Review**

The Final Capability Review will be heard by three members of the Personnel Committee.

The Clerk who conducted Stages 1 and 2 should also be present to provide details of the previous review meetings and of the steps taken to encourage improvement in the employee's performance.

The employee will have the opportunity to respond and put forward any points they wish to be considered.

Consideration should be given to any alternatives to dismissal such as redeployment or options of downgrading, however this may not always be possible and will depend on each individual situation and the circumstances of the organisation.

The Panel must satisfy themselves that they have heard all of the relevant information and that the employee has been given sufficient opportunity to improve. If they consider that the employee's performance remains unsatisfactory they must inform the employee that their employment is terminated on the grounds of capability or any alternatives to dismissal.

The employee's dismissal will be with notice or, if serving their notice period is not in the interests of the Council, they will receive pay in lieu of notice. The dismissal must be confirmed in writing within 5 working days, stating the reasons for it and informing the employee of their right of appeal.

## Levels of Authority

Guidance is given here on the appropriate levels of authority although alternative arrangements may have to be made on occasion.

Formal	Officer	Authority
Stage 1 & 2	Clerk	Formal warnings
Stage 3	Personnel Committee	Dismissal

## The Right of Appeal

In the event of a formal warning or dismissal the employee has the right of appeal to the Clerk (or Chair of the Personnel Committee, in relation to matters concerning the Clerk). The Appeal must be made in writing within 10 days of the date of the letter confirming dismissal.

Three members of the Appeal Committee will hear the appeal, providing that they have had no previous involvement in the matter, assisted by an independent adviser.

The appeal will take place as soon as is practically possible. The Appeal Panel will consider the details of the poor performance presented by the Chair of the Final Capability Review and will consider the comments of the employee.

The decision of any appeal hearing is final.

## Training

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