

Tenby Town Council

Disciplinary Procedure

Introduction

It is the intention of the authority to promote at all times, the high morale that makes for self-discipline in every employee, and group discipline within every work team. Disciplinary action should be constructive, is to be used to inform, remind and encourage employees in regard to accepted standards of work and conduct and to prevent a minority from destroying those standards.

Dismissal will be taken only as a last resort, but all members of the supervisory staff and section leaders will ensure that employees maintain the correct standards and, in order to provide a fair and effective method of dealing with disciplinary matters, the following procedure will be applied, whenever appropriate, other than where an informal reprimand is given for some relatively minor act of misconduct.

General

It is recognised by all concerned that discipline is essential for the efficient conduct of the Local Authority's affairs and for the safety and well-being of all employees, and that disciplinary action should be applied fairly, equitably and effectively.

The Financial Officer/Clerk to the Council is the member of staff who is ultimately responsible to the Town Council for the Management and discipline of all the employees. The Financial Officer/ Clerk to the Council has the delegated power to suspend from duty with pay any employee pending investigations of any matter relating to his conduct or work.

The Disciplinary rules and procedures will be revised periodically in the light of any developments in employment legislation or industrial relations practices and if necessary revised to ensure continuing relevance and effectiveness. Any amendments and additions imposing new obligations will only be introduced after reasonable notice has been given to all employees' representatives.

Scope

1. The Disciplinary Rules and Procedures herein described in relation to dismissal do not apply in the event of an employee's redundancy, during or at the end of an employee's six months probationary period (26 weeks), nor to casual employees and those engaged for a specific period or under training agreements.
2. The procedure shall not apply to questions of incompetence, incapability or other poor performance at work which is not considered to be attributable to a wilful disinclination by an employee to carry out his or her duties efficiently or effectively, but thought to be attributable to a lack of skill or aptitude or to health or any other physical or mental quality.

Separate procedure, such as counselling, should be available to attempt to resolve such problems.

3. Employees are to be reminded of their rights of representation by anyone of his/her choice at all disciplinary hearings following the first disciplinary letter.
4. Every disciplinary decision must be preceded by an interview where the employee is informed precisely of the specific complaint(s) against him/her and given the opportunity to explain, although an explanation would not be appropriate where he has been arrested or charged with a criminal offence connected with the complaint.
5. Written warnings must clearly set out the specific complaints and the action taken, that the employee has been notified that such a warning is to be marked on his/her personal record and of the employee's right to appeal.
6. Where relevant in cases of conduct or efficiency, a reasonable period of time should be allowed from the time of the warning for the employee to meet the required standards. A 'reasonable period of time' will vary according to the nature of the occurrence and will be determined at the time of the warning.
7. Decisions in matters related to the conduct of an employee sometimes have to be taken immediately. Where doubt may exist, suspension of the employee will allow time for an objective examination of the circumstances of the alleged misconduct. In general this is preferable to a hasty decision to dismiss which may prejudice a subsequent decision by an Appeals Committee or Industrial Tribunal.
8. Except for dismissal due to gross misconduct, dismissal should be in accordance with notice as stipulated in the employee's contract of employment. The period of notice should be calculated from the date on which the decision is notified in writing to the employee. Certain instances of misconduct are more serious than others and would be considered as 'gross misconduct' and liable to immediate disciplinary action. Examples of gross misconduct include:
 - a. Unauthorised removal of Council property.
 - b. Stealing from the Council, members of staff, pupils or the public.
 - c. Other offences of dishonesty.
 - d. Gross negligence.
 - e. Serious acts of insubordination,
 - f. Sexual offences or sexual misconduct.
 - g. Fighting, physical assault.
 - h. Falsification of a qualification which is a stated requirement of the employment or which results in financial gain.
 - i. Harassment.
 - j. Deliberate damage to, or misuse of, Council property.
 - k. Drunkenness or being under the influence of drugs at work.
 - l. Falsification of records or claims for personal gain.
 - m. Failure by a member of staff to report actual or suspected physical or sexual abuse of a child by another member of staff or other person having contact with the child.

This list is neither exclusive or exhaustive. Other acts of misconduct may come within the general definition of gross misconduct.

9. Dismissal or other serious disciplinary action should be confirmed by letter which should be handed to the employee or sent by recorded delivery over the signature of the Financial Officer/Clerk to the Council. This letter should state the grounds for the action taken and advise the employee (in cases of relegation, transfer or dismissal) that he/she should notify the Financial Officer/Clerk to the Council within five days if he wishes to appeal against the decision to a duly formed Appeals Panel of the Town Council before which he/she may appear in person with, or without, a representative of his/her choice.
10. Normally, no action under the disciplinary procedure beyond an informal oral warning should be taken against an employee who is an accredited representative of a Trade Union recognised by the Council for collective bargaining purposes until the Financial Officer/Clerk to the Council, in consultation with representative members of the Council, has discussed the circumstances of the case with the appropriate full time official of that Trade Union.

Counselling

It is recognised that successful counselling can help employees improve performance and conduct and avoid the need to take formal disciplinary steps.

Counselling should:

- a. Be private
- b. Be a two-way discussion
- c. Provide constructive criticism – investigate /be aware of the facts before you begin.
- d. Give encouragement.
- e. Seek to help the employee to improve.
- f. Explain that disciplinary action could follow
- g. Not usually involve trade union representatives as procedure is intended to be:
 - (i) informal
 - (ii) be one to one

Counselling should not turn into a disciplinary interview. While it should be noted for reference purposes, it is not generally necessary to confirm the outcome of a counselling interview in writing. However, it may be mutually beneficial on occasions to do so, particularly if a plan has been agreed for improvement in the future. In any event the officer conducting the interview, be it the employee's immediate line manager or the Financial Officer/Clerk to the Council will make a note of the interview and its outcome for reference purposes and will also follow up on any agreed plan for improvement.

If counselling proves ineffective, then formal disciplinary procedure should be invoked.

Disciplinary Procedures

In the case of employees directly responsible to the Financial Officer/Clerk to the Council, the Financial Officer/Clerk to the Council is empowered to give informal oral warnings for the purpose of improving conduct when employees commit minor infringements of the established standards. In the case of employees NOT directly

responsible to the Financial Officer/Clerk to the Council, the employee's immediate superior is empowered to give informal oral warnings for the purpose of improving conduct when employees commit minor infringements of the established standards. However, where the facts of a case appear to call for disciplinary action, the following procedure will be observed:

Investigation

1. Where a matter arises which is suspected or believed to contravene a disciplinary rule, or may otherwise be a disciplinary matter, the Financial Officer/Clerk to the Council will investigate it promptly and adequately. In the event where the matter relates to the Financial Officer/Clerk to the Council the initial interview shall be conducted by the Mayor in Office. At the stage when an employee has to be interviewed as part of the investigation reasonable notice (if appropriate) shall be given of the interview, the employee told the purpose of it, and the nature of the alleged misconduct outlined. When the investigation is concluded, the employee and his representative (if any) will be informed.
2. If the matter to be investigated is thought to involve serious misconduct, an employee may be immediately suspended from work on full pay while the investigation proceeds. Similarly, if during the course of the investigation the Financial Officer/Clerk to the Council is of the view that a serious breach of discipline may have occurred, he may then suspend the employee. Any decision to suspend will be confirmed in writing to the employee as soon as reasonably practicable and the Mayor and the Chairman of the appropriate committee of the Town Council informed. This will be a precautionary, not a disciplinary, suspension pending the outcome of the matter.
3. The Financial Officer/Clerk to the Council should take the matter forward to the point where a decision can be made on (a) whether or not there is a case to answer and (b) how the allegation(s) can be specified.
4. It is the task of the Financial Officer/Clerk to the Council to ascertain the facts and assemble the evidence. As part of this investigation, interviews and/or written statements should be undertaken.
5. As part of the investigation, the employee will normally be interviewed. This will not be a "disciplinary interview" or hearing, but will be for the purpose of investigating the matter before deciding whether to take the procedure further. At this "preliminary interview" or hearing, it is advisable for the investigating officer to have another member of management present, likewise the employee may prefer to have someone present. This could be a work colleague or a recognised trade union representative. The more information that can be obtained through the interview the sounder will be the basis for any subsequent action. The preliminary interview is a means of obtaining facts, and particularly to hear the employee's viewpoint.
6. If, on completion of the investigation, the Financial Officer/Clerk to the Council conducting it believes on reasonable grounds that the complaint or allegation is unsubstantiated, the matter will be dropped, details of the alleged offence deleted from the record, and the employee advised.

7. Where the Financial Officer/Clerk to the Council has sufficient information available to them and, having taken account of any explanation the employee may offer, believes on reasonable grounds that the employee has committed the alleged act of misconduct, but in view of the nature of the misconduct and of the employee's previous record a formal oral warning would be sufficient, he or she may administer it without proceeding further. A note of that warning would be made and kept on the employee's personal file and the Mayor and the Chairman of the appropriate committee of the Town Council informed. The employee will be informed of his or her right of appeal.
8. If, on completion of the investigation, the Financial Officer/Clerk to the Council believes, on the balance of probabilities, that there is substance to the complaint and the employee has a case to answer where more than a formal oral warning would be deemed an appropriate course of action, or where there has been a continuation offence after a formal oral warning, a disciplinary hearing will be arranged involving a panel of selected Town Councillors.
9. In the interest of natural justice, the Council will ensure that the officer who investigated the alleged disciplinary misdemeanour, or any councillors with an interest, do not adjudicate upon it, although they may be asked to give evidence. In the event of the same employee being brought before a second disciplinary panel on a similar, or unrelated matter, before any previous disciplinary decision has been regarded as spent, those councillors who sat on the original panel should not, if possible, be asked to adjudicate on it.

The Disciplinary Hearing

1. The employee will be given a minimum of five working days advance notice, in writing, of the hearing; told the purpose of it, with the nature of the alleged misconduct being outlined, and invited to attend together if desired with his or her trade union representative or work colleague. If, during the course of the investigation statements have been obtained from witnesses who will not be attending the hearing, the employee and his or her representative will be given those statements, no less than five working days in advance of the hearing. Where statements are to be submitted, under normal circumstances those persons making such statements shall be available to be questioned at the hearing in respect of the contents of their statements. Where statements are not thus supported, the importance attached to any such unsupported statements should be weighted appropriately by those considering such statements as evidence. However, where necessary and in special circumstances (for example, possible intimidation or vulnerability of witnesses), the identity of witnesses can and shall be protected.
2. If, for good reasons, the employee or his/her representative is unable to attend the hearing, it will be adjourned to a date which the employee and his or her representative (if any) will be informed without delay. If the employee is unable to attend the re-arranged hearing, it will normally proceed. An opportunity to present the employee's case on his or her

behalf at that hearing will be given to the representative. Any submission by the employee in writing, or by his or her representative, will be considered.

3. The hearing will normally be conducted by five members of the Town Council. The Financial Officer/Clerk to the Council who conducted the investigation may be asked to present the supporting facts and material.
4. The chairman conducting the hearing, the employee, or his or her representative, will be entitled to question the Financial Officer/Clerk to the Council and any witness who may attend the hearing to give their account of the matter.
5. The employee will be given the opportunity to offer an explanation and may be questioned by the chairman conducting the hearing. The investigating officer, as well as the employee or his or her representative, will be given the opportunity to address the hearing.
6. The Hearing will ask the investigating officer and witnesses called and the employee or his or her representative, to withdraw.
7. The Panel, with the officer appointed as secretary to the Hearing, deliberate in private, only recalling the investigating officer and/or the employee (or his/her representative) and witnesses to clarify points of uncertainty on evidence already given. If recall is necessary both parties will return notwithstanding only one is concerned with the point giving rise to doubt.
8. The chairman presiding over the hearing may adjourn the hearing at any time if this appears necessary or desirable. If adjourning for the purpose of enabling further information to be obtained, he or she will specify the nature of that information. Any adjournment will normally be for a state period.
9. On completion of the proceedings, having carefully considered the evidence, the committee has plenary powers to take any action it deems fitting and the chairman presiding will normally announce the decision and the disciplinary measures, if any, to be taken, which shall be minuted by the officer appointed as Secretary to the Hearing. He or she will also give an explanation for that decision and explain the employee's right of appeal under this procedure. The outcome of the hearing will be confirmed in writing to the employee and his or her representative by the Financial Officer/Clerk to the Council.

Disciplinary Measures

In cases, other than those involving gross misconduct, where a reasonable belief is established on the balance of probabilities of the employee's guilt of the alleged misconduct, the following disciplinary measures may be taken:

1. **STAGE 1: A Formal Verbal Warning**

For a minor offence. This is the responsibility of the Financial Officer/Clerk to the Council to administer (or the Mayor in the case of the Financial Officer/Clerk to the Council). Where appropriate the verbal warning will be administered in the presence of the employee's immediate superior/line manager. The warning will be recorded on the employee's record and the

Mayor and the Chairman of the appropriate committee of the Town Council informed. The warning will remain valid for six months from the date of issue, but will be regarded as spent after that period subject to satisfactory conduct and performance.

2. STAGE 2: First Written Warning

For more than a minor offence, or a continuation offence after a formal oral warning has been given and remains valid. This is the responsibility of the Financial Officer/Clerk to the Council to administer following the decision of a Disciplinary Hearing. The warning will specify the nature of the offence, inform the employee that further misconduct is liable to result in further disciplinary measures, specify the period for which it will apply and explain the right of appeal. The warning will remain valid for one year after which it will be regarded as spent, subject to satisfactory conduct and performance.

3. STAGE 3: Final Written Warning

This will be the responsibility of the Financial Officer/Clerk to the Council to administer following the decision of a Disciplinary Hearing. For an offence after a Written Warning has been given and is extant, or for a serious offence which might justify summary dismissal for gross misconduct, but where it is decided that a lesser penalty is appropriate in the circumstances, a final (or combined first and final) written warning will be issued. The warning will set out the nature of the offence, inform the employee that further misconduct will render him or her liable to further action under the procedure and could result in dismissal, and advise of the right of appeal.

The warning will remain valid for one year from the date of issue. There may be circumstances where the misconduct is so serious that it cannot realistically be disregarded for future disciplinary purposes, eg certain child-care offences or there may be circumstances where the warning will remain valid in excess of one year, and this will be a matter of settlement between the employee and union representative (if applicable) and the Authority at the time a Final Written Warning is given. Employees will be clearly informed, at the date of issue, as to the time limit for the warning.

4. STAGE 4: Disciplinary Action

The decision will rest with the Disciplinary Panel of Tenby Town Council. For an act or acts of further misconduct, other than gross misconduct, an employee will be liable to:

- relegation (demotion to a lower graded post on a permanent or temporary basis);
- reduction in salary;
- disciplinary suspension without pay
- or dismissal.

Where action short of dismissal is implemented, it will be in conjunction with a further Final Written Warning which will remain valid for a period of one year, or longer, depending on the circumstances of the case, from the date of issue.

5. In serious cases, provision is made for the process to begin at a later stage in the procedure.

Gross Misconduct

Gross misconduct is misconduct of such a nature that the Council can no longer accept the continued presence of the employee at the place of work and/or misconduct serious enough to destroy the employment contract between the Council and the employee and make any further working relationship or trust impossible.

In cases of Gross Misconduct (examples of which are listed earlier), or a fundamental breach of the Contract of Employment and/or Company rules and regulations the procedure will be as follows:

1. Stage 1
The Financial Officer/Clerk to the Council will suspend the staff member on full salary pending a detailed investigation of the matter. Where possible the appropriate Union representative will be present during the suspension interview or if he/she is not available, a work colleague will be permitted to attend at the request of the staff member. Where the Union representative is unable to attend he/she will be advised of the circumstances at the earliest opportunity.
2. Stage 2
On completion of the investigation a formal Disciplinary Hearing will be conducted in line with set procedure in the presence of the Staff member(s) involved and the appropriate Union representative or work colleague at which all the available evidence will be presented and examined as necessary. If the allegation of gross misconduct is proven the appropriate disciplinary action will be taken and can include dismissal if appropriate.

Criminal or Quasi-criminal offences outside work

An employee should not be automatically dismissed or otherwise disciplined merely because he or she has been charged with, or convicted of, a criminal offence. The question to be asked in such cases is whether the employee's conduct warrants action because of employment implications. The misconduct does not have to be connected with work if, in some way, it (a) affects the employee or (b) could be likely to affect the employee when working. In whatever circumstance this is a difficult area of judgement and, in all cases, appropriate legal advice should be sought. It would be best practice for the employee concerned to have the opportunity to explain and asked his/her view on whether the offence is likely to adversely affect work or working relationships. Careful consideration will need to be given as to whether a breach of trust has occurred and a reasonable view taken. In any event, each case has to be considered on its merit.

Appeal

Provision exists for appeal against disciplinary action at any stage of this procedure and each employee shall be informed of this right.

Any appeal shall be heard by a specially selected Appeals Panel of Town Councillors. In hearing an appeal, the Council shall conform to the rules of natural justice and as such, those councillors selected for the Appeals Panel will not have adjudicated on, or have been otherwise involved in, the disciplinary matter prior to the Appeals Panel sitting.

The Appeals Panel shall, wherever practicable, hear such appeals before the disciplinary action takes effect.

Plenary powers are given to this panel to take such action they deem appropriate and the panel can either uphold the disciplinary action taken or reduce it. If the Panel determines that any notice of dismissal, transfer or relegation shall not take effect, the notice shall be withdrawn immediately.

The decision made at the end of the Appeals process is final and marks the end of all internal dispute resolution.

Procedure to be followed at Appeals Hearings

1. If at any time in the disciplinary procedure, up to and including the final written warning, any staff member issued with a recorded verbal warning, a written warning or any action short of dismissal, relegation or transfer, wishes to exercise his or her right to Appeal, he or she has 21 calendar days from receiving written confirmation of the penalty in which to notify the Financial Officer/Clerk to the Council in writing.
2. Following receipt of notice of relegation, transfer or dismissal the employee concerned must notify the Financial Officer/Clerk to the Council, in writing, within five working days if wishing to appeal.
3. The employee shall clearly outline the basis of his/her appeal.
4. The employee shall be given notice, in writing, at least five days in advance of the time and place of the hearing and advised that he/she has the right to be accompanied by any representative of his/her choice.
5. The Appeal shall firstly ensure that the matter of complaint has been clearly put to the appellant and secondly that the appellant has been afforded the opportunity of being represented at the hearing of his appeal by such work colleague, trade union representative, lawyer or other representative as he/she may choose. The employee shall be enabled to call witnesses and produce documents relevant to his/her defence at the hearing.
6. It may not be practicable for all witnesses to attend the hearing. In special circumstances, where witnesses are particularly vulnerable or fearful of intimidation, their identity can, and shall, be protected.
7. At the hearing the Town Council's representative shall put the case in the presence of the appellant and his representative and have the right to call witnesses.
8. The appellant (or his/her representative) has the opportunity to ask questions of the Town Council's representative on the evidence given by him/her and any witnesses called.
9. The Panel may ask questions of the Town Council's representative and witnesses.

10. The appellant (or his/her representative) puts his/her case in the presence of the Town Council's representative and calls such witnesses as he/she so wishes.
11. The Town Council's representative has the opportunity to ask questions of the appellant on the evidence given by him/her and any witnesses called.
12. The Panel may ask questions of the appellant and witnesses.
13. The Town Council's representative and the appellant (or his/her representative) have the opportunity to 'sum up' their case if they so wish.
14. The Town Council's representative and the appellant (or his/her representative) and witnesses withdraw.
15. The Panel, with the officer appointed as secretary to the Hearing, deliberate in private, only recalling the Town Council's representative and/or the appellant (or his/her representative) and witnesses to clarify points of uncertainty on evidence already given. If recall is necessary, both parties will return not withstanding only one is concerned with the point giving rise to doubt.
16. On completion of the proceedings, having carefully considered the evidence, the Panel chairman presiding will announce the decision, which shall be minuted by the officer appointed as Secretary to the Hearing. The outcome of the hearing will be confirmed in writing to the appellant and his or her representative by the Financial Officer/Clerk to the Council.

Supplementary Notes

1. In the event of it being adjudged that the employee was not blameworthy, any suspension shall be terminated forthwith and the employee shall receive all monies to which he/she would have been entitled but for suspension.
2. Except where suspension without pay is adopted as a disciplinary action then, during a period of suspension the employee should receive their normal rate of pay.
3. Dismissal for misconduct, other than gross misconduct, will normally be with pay in lieu of notice as prescribed in an employee's contract of employment.
4. In cases where gross misconduct is alleged and is established on the balance of probabilities, the employee will be liable to summary dismissal, without notice. While the employee shall not be entitled to pay in lieu of notice, he/she shall be entitled to payment for any leave days accrued but not taken and to retain any sum paid to him/her while on suspension.

Confidentiality

Discipline matters are, by their very nature, personal and confidential. It is important that confidentiality is maintained at all times. During an investigation no information will be disclosed to the media, or third parties not directly involved. At the conclusion of a disciplinary matter, if required, only the Financial Officer/Clerk to the Council shall be authorised to disclose information about the case based on a statement prepared in liaison with the Town Council.

