



# Penrith Town Council

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## **DISCIPLINARY ARRANGEMENTS**

### **INTRODUCTION**

This procedure forms part of the local conditions of service for all members of staff of the Penrith Town Council ("the Council"). Discipline is essential for the conduct of the Council's affairs and for the safety and wellbeing of all members of staff. The Council has established and maintains a fair procedure for the handling of disciplinary matters and the conduct of disciplinary appeals which should mean that most breaches of the disciplinary rules can be dealt with by a lesser penalty than dismissal without breaching the individual's contract of employment. However, the Council intends the Procedure to be used primarily as a tool to help or encourage members of staff to improve rather than just as a way of punishing them.

The Town Clerk is responsible for maintaining discipline within the Council. Normally this will be done by example, advice, job training and informal reprimands and by members of staff observing proper standards of conduct and the Council's policies and procedures.

The Council intends and expects that this situation will continue but, in the interests of the conduct of the its business and for the safety and welfare of all members of staff, discipline may on occasion need to be reinforced by the formal elements of this procedure.

The Council recognises that misconduct and unsatisfactory work performance are different issues. The disciplinary policy will also apply to work performance issues to ensure that all alleged instances of employees' underperformance are dealt with fairly and in a way that is consistent with required standards. However, the disciplinary policy will only be used to when performance management proves ineffective. For more information refer to ACAS publications.

## 1. PURPOSE AND SCOPE

This procedure is designed to help and encourage all Penrith Town Council (the Council) employees to achieve and maintain high standards of conduct whilst at work or representing the Council. The aim is to ensure consistent and fair treatment for all. This procedure is prepared in accordance with the dismissal and dispute resolution procedures as set out in the Employment Act 2008 and the ACAS Code of Practice March.

- a) No disciplinary action will be taken against an employee until the case has been fully investigated.
- b) At every formal 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.
- c) At all formal stages the employee will have the right to be accompanied by a trade union representative or work colleague during the disciplinary interview.
- d) No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty of dismissal without notice or payment in lieu of notice may be applied.
- e) An employee will have the right to appeal against any disciplinary penalty imposed.
- f) The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

## 2. THE PROCEDURE FOR MISCONDUCT and GROSS MISCONDUCT

### MISCONDUCT

The following list provides examples of **misconduct** which will normally give rise to formal disciplinary action:

- Unauthorised absence from work
- Persistent short-term and/or frequent absences from work without a medical reason
- Lateness for work or poor time keeping
- Inappropriate standard of dress
- Minor breaches of Health and Safety or other rules or procedures
- Failure to perform his/her job to the standard expected or in line with your job description/objectives
- Time wasting
- Disruptive behaviour
- Misuse of the Council's facilities (e.g. telephones, computers, email or the internet)
- Refusal to carry out reasonable requests or instructions from a line manager
- Smoking in unauthorised areas
- Failure to follow an agreed Council Policy or Procedure

This list is not exhaustive and offences of a similar nature may result in disciplinary action being instigated. Persistent or frequent absence on medical grounds and long-term sickness absence will be addressed using a procedure to determine incapacity.

The following list provides examples of offences which are normally regarded as **gross misconduct**:

- Theft, fraud, deliberate falsification of records, or other acts of dishonesty
- Fighting, assault on another person
- Deliberate damage to property of the Council, its workers or members
- Gross incompetence in the conduct of work
- Gross negligence which results in the Council, its employees or third parties being put at risk.
- Being under the influence of illegal drugs or excessive alcohol
- Bullying including but not limited to acts of incitement towards or actual acts of discrimination, harassment or victimisation including on the grounds of sex, race, colour, ethnic origin, disability, sexual orientation, age, religion or belief
- Serious acts of insubordination
- Serious breach of duty to keep information of the Council, its service providers and its clients confidential
- Unauthorised entry to computer records
- Serious breach of the Council's Security, Health & Safety, Confidentiality or Email and Internet
- Any action, whether committed on or off the premises, that is likely to or does bring the Council into disrepute
- Serious negligence which causes or might cause significant loss, damage or injury
- Accepting bribes or incentive payments from suppliers
- Unauthorised use of Council funds or credit
- Abuse of Council debit cards or supplier accounts
- Working with an external agency to provide information which would be detrimental to and cause commercial risk to the Council.

This list is not exhaustive and other offences of a similar gravity may result in disciplinary action being instigated at gross misconduct level which carries a potential penalty of dismissal.

## **INFORMAL ACTION**

Minor misconduct will usually be dealt with informally, usually in a confidential one-to-one meeting between the employee and line manager. The line manager will inform the Chairman of the Council and share the findings and the decision of the informal meeting. The Chairman and Town Clerk will decide and instruct upon the next appropriate course of action. In the case of the Clerk being the individual against whom there is a complaint or allegation, the matter should be handled discreetly by the Chairman of the Council (i.e. Mayor) and involve an informal meeting initially.

Where there is no case to answer no record will be kept. If a matter has been confirmed and performance monitoring is required, a note of the meeting date and agreed actions will be held on file. Where the matter is found to be more serious or informal action has not brought about the necessary improvement, the following procedure will be used.

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## FORMAL ACTION

The level of warning an employee may receive for misconduct/gross misconduct will depend on how serious the Council considers the alleged actions to be and the employee's previous conduct in all the circumstances. In the event of alleged gross misconduct, the formal process may commence at Stage 3.

The procedure will not normally be invoked unless –

- a) previous advice or informal oral reprimands have been ineffective;
- b) the complaint is of a serious nature;
- c) the complaint is of gross misconduct.

The following principles will apply –

- I. Any disciplinary action will depend on the seriousness of the offence, the past recorded behaviour of the member of staff, the consequences to the Council of the offence and any mitigating circumstances presented by the member of staff; and
- II. Any disciplinary action taken against the member of staff will be appropriate to the circumstances of the case having regard to the need for reasonableness and fairness on the part of the Council; and
- III. The opportunity exists where a written warning or other more serious disciplinary action is specified, for the member of staff to appeal against the action.
- IV. Before an investigation takes place prior to any formal warning being given or where other disciplinary action is contemplated the member of staff concerned will be advised of their right to be accompanied by a trade union representative or some other representative of their choice.

All stages of the formal procedures should be carried out as speedily as possible in the interests of both management and staff, particularly in cases of alleged gross misconduct. The Council will give notice in writing of the date of the disciplinary interview to the member of staff and their representative (if any). This notice is not required in the case of a disciplinary interview where the charge is of gross misconduct and the sole purpose of the interview is to consider whether to suspend the member of staff immediately pending a detailed investigation.

## **Disciplinary Letters**

If there is a concern about an employee's conduct or behaviour then a letter will be given to the employee advising him/her of the allegation(s) and reasons why this is unacceptable. The letter should invite the employee to attend a meeting at which the alleged misconduct will be discussed and will inform the employee of their right to be accompanied to the meeting. The letter will specify at which stage the disciplinary procedure is being invoked (see three stages below) and if invoked at Stage 3 for gross misconduct, the letter will warn that a potential outcome could be dismissal. The time, date and venue of the meeting will also be advised. Any documents to be produced at the meeting will also be provided.

## **Disciplinary Meetings**

The time and location of a disciplinary meeting should be agreed with the employee and it should be held in a private location with no interruptions. This will normally be without undue delay but allowing the employee time to prepare his/her case; where practical, within 5 days of the letter being sent. At the meeting the manager (or in the case of the Clerk being disciplined, the Chairman of the Disciplinary Sub-Committee, as the Hearing Panel) will state the complaint against the employee and go through the evidence which has been gathered. The employee will also be allowed to ask questions, present evidence and call witnesses providing advance notice has been given that he/she will do so.

If the employee is unable to attend the meeting due to unforeseeable reasons out of their control (e.g. illness) then the Council will reasonably rearrange the meeting. However, if the employee fails to attend the meeting without good reason the meeting can be held in the employee's absence.

## **OUTCOMES AND PENALTIES**

### **Stage 1 - First Stage Written Warning**

In the instance of a first complaint that conduct does not meet acceptable standards, the employee will normally be given a First Stage Written Warning. He or she will be advised;

- of the reason for the warning,
- that it is the first stage of the disciplinary procedure,
- of the improvement that is required and the timescales for achieving this improvement,
- of a review date and any support available (where applicable)
- that action under Stage 2 will be considered if there is no satisfactory improvement, and  
 of his or her right of appeal.

### **Stage 2 – Final Written Warning**

If there is a failure to improve and conduct or performance is still unsatisfactory, or the misconduct is sufficiently serious, a Final Written Warning will be given to the employee. This will give details of the complaint, will warn that dismissal may result if there is no satisfactory improvement over a specific given timescale and will advise of the right of appeal.

### **Stage 3 – Dismissal or other sanctions**

If conduct is still unsatisfactory and the employee still fails to reach the prescribed standards, or where the Council reasonably believes gross misconduct has occurred, dismissal may result.. The employee will be given a written statement of allegations against him/her, invited to a meeting and then be notified in writing of the reasons for the decision taken at the hearing.

Penalties at this stage may include dismissal with notice or summary dismissal (i.e. without any notice), Final Written Warning with/without demotion, loss of pay or loss of seniority. If dismissal is the outcome, the employee will be advised of the date on which employment will terminate. In all cases the employee has a right to appeal.

Very exceptionally, if an offence of gross misconduct is extremely serious an employee can be dismissed immediately without a meeting following the Modified Statutory Disciplinary and Dismissal Procedure.

In this situation a letter would be sent to the employee setting out the alleged misconduct which led to the dismissal, written particulars of the Council's basis for thinking at the time of the dismissal that the employee was guilty of the alleged misconduct and written confirmation of his/her right of an appeal against the dismissal.

### **Time Limit for Warnings**

Disciplinary warnings will remain in force for a specified period of time; this time period will be advised to the employee in writing when being advised of the warning. First Stage Written Warnings will normally be valid for a period of six months and Final Written Warnings normally for a period of twelve months.

Assuming there are no further instances of misconduct or poor performance during this period the warning will no longer be 'live' and will thus be disregarded for future disciplinary purposes, except in agreed special circumstances. In a circumstance where misconduct is so serious that it cannot be realistically ignored for future disciplinary purposes, then this will be set out very clearly in writing with the warning itself.

If there are occasions where an employee's conduct is satisfactory throughout the period the warning is in force only to worsen very soon after and a pattern emerges that there is evidence of abuse, the employee's disciplinary record will then be borne in mind in deciding how long a warning should last.

## **SUSPENSION**

If an employee is accused of an act of gross misconduct, he/she may be suspended from work on full pay while the Council investigates the alleged offence. Only the appropriately convened committee or Council Officer with delegated powers has the power to suspend. This enables a swift and thorough investigation to occur.

Whilst suspended pending disciplinary investigation, regular contact with a nominated person at the Council will be maintained although access to premises, equipment or systems may be denied. The individual/s who compiles evidence for the disciplinary hearing must play no part in the subsequent decision-making to ensure impartiality.

The Council will need to consider the implications of such arrangements on its hearing and appeal panel plans early on in the disciplinary process.

## **APPEALS**

The Appeals stage of the disciplinary process is part of the Code of Practice to which an employee has a right. It can be exercised after any of the stages of disciplinary action for misconduct/poor performance or gross misconduct.

An employee who wishes to appeal against a disciplinary decision should inform the Chairman of the Appeals Committee within five working days, in writing and giving reasons for the appeal. An appeal may be raised if:

- the employee thinks the finding or penalty is unfair
- new evidence has come to light
- the employee thinks that the procedure was not applied properly.

Where possible the appeal will be heard by a separate panel of elected members who have not been involved in the original disciplinary hearing, who will view the evidence with impartiality. The employee will have the right to be accompanied by a colleague or accredited Trade Union official or lay member at the appeal hearing. The outcome of the appeal and reasons for it will be advised to the employee as soon as possible after the meeting and be confirmed in writing.

At the appeal hearing any disciplinary penalty imposed will be reviewed but it cannot be increased. The decision taken at the appeal hearing will be final.

## **THE RIGHT TO BE ACCOMPANIED**

At each formal stage of disciplinary interview an employee has the right to be accompanied and can make a reasonable request for such a person to accompany them. An employee can ask any other employee or a trade union representative or an appropriately accredited official employed by a trade union to accompany them, to give support and help them prepare for the disciplinary interview. This right is enshrined in the 1999 Employment Relations Act. As this is an internal process there is no provision to have any external person accompany or represent an employee e.g. partner, parent, solicitor etc. The companion can address the hearing, put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee. The companion cannot however answer questions on the employee's behalf or address the hearing if the employee does not wish him/her to, or prevent the employee explaining his/her case.

### **3.8 HEARING PANELS**

The Council has a Disciplinary/Grievance Sub-Committee and Appeals Committee. The members of these Committees will be given the opportunity to receive training on dealing with such matters as disciplinary proceedings, grievance procedures and considering appeals. Where practical, if an individual has undertaken an investigatory role then he/she will be substituted as panel members at any disciplinary or appeal hearings. Where disciplinary action is taken against the Town Clerk or for some reason the Clerk is unable to have involvement, the Council should look to appoint an external expert to assist throughout the process.

#### **NOTE-TAKING**

It is highly recommended that a note-taker be provided to every meeting/hearing which arises as a result of a disciplinary process, as Employment Tribunals are particularly keen to view contemporaneous notes of events which have led to an employment dispute. If both parties agree, the meeting can be audio recorded. The Council will need to give this requirement careful consideration in order to respect employee confidentiality.

#### **GRIEVANCES RAISED DURING DISCIPLINARIES**

Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

#### **CRIMINAL CHARGES OR CONVICTIONS**

If an employee is charged with or convicted of a criminal offence not involving the Council, this does not automatically give rise to a disciplinary situation. Consideration needs to be given to how a charge or conviction may affect an employee's ability to undertake his or her job duties and their relationships with the employer, colleagues, subordinates or customers.

#### **GETTING IT WRONG**

Failure to follow the ACAS Code of Practice (available at [www.acas.org.uk](http://www.acas.org.uk)) can lead to an Employment Tribunal awarding an uplift of an award against the council of up to 25%. Tribunals dealing with unfair dismissal claims are particularly interested in whether the employer followed a procedure and whether the employer acted fairly and reasonably. One way in which to avoid such a penalty is to have an agreed procedure, communicate that procedure to employees and Members, revisit and review the procedure regularly and have some training for those who are expected to operate the procedure.

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