



Disciplinary Process

Policy 2

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1.0 Aims And Objectives

- 1.1. This procedure is designed to assist the Council and the Clerk to maintain the required standards of conduct, general discipline and performance (where it is known that the skills and abilities are present in the Clerk but have not been demonstrated). Disciplinary rules and procedures are in place to ensure that fairness and consistency are followed in the treatment of individuals, and that relevant employment law is adhered to. The Council will have full regard to the principles and standards set out in the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 1.2. In cases of unsatisfactory performance (or 'capability') advice should be sought as to whether the Capability Procedure Policy should be followed. The Capability Procedure Policy applies when the incapability is due to a genuine or inherent lack of skill or ability. In these circumstances support and training will be given to the Clerk. The basic principles of fairness set out in the ACAS Code of Practice will still be followed.

2.0 Scope

- 2.1. This procedure applies to the Clerk.
- 2.2. In all instances, the following will apply:
 - 2.2.1. The decision to use the disciplinary procedure will be taken by either the Chairman of the Council or the Chairman of the Finance and General Purposes Committee along with two other Councillors to make up a panel of three members of the Council.
 - 2.2.2. Case hearings will be undertaken by the above panel.
 - 2.2.3. Appeals will be heard by the Full Council excluding members of the original panel.
 - 2.2.4. The decision to dismiss will be taken by the Full Council excluding members of the original panel.

3.0 General Guidelines And Principles

- 3.1. The Council is responsible for the management and discipline of the Clerk.
- 3.2. No disciplinary action will be taken against the Clerk until the case has been fully investigated by the panel. There are a number of key elements to this:
 - The issues should be raised and dealt with promptly and meetings, decisions and confirmations of those decisions should not be unreasonably delayed.
 - All parties involved should act consistently.
 - An investigation should be carried out to establish the facts of the case before any disciplinary process commences.
 - The panel should inform the Clerk of the circumstances of the problem and give the Clerk an opportunity to put their case in response before any decision is made.
 - The Clerk has the right to be accompanied at any formal disciplinary meeting.
 - The Clerk has the right to appeal against any formal decision made.

- For allegations of criminal acts, the Chairman of the Council will consult in confidence with the Chairman of the Finance and General Purposes Committee before a decision is made to put the case in the hands of the Police.
- 3.3. At all stages, the Clerk has the right to be accompanied by a single companion, who is either a:
1. work colleague,
 2. employee representative, or
 3. trade union official (a trade union representative who is not an employed official must have been certified by their union as being competent to accompany an employee).

Legal representation is not permitted. The Council will not bear costs. The specific needs and circumstances of the Clerk or their representative will be catered for as far as reasonably practicable.

- 3.4. In all cases, the Council's Equal Opportunities Policy will be adhered to.
- 3.5. At every stage of the procedure the Clerk will be advised of the nature of the complaint against them and the potential penalty and will be given the opportunity to state their case before any decision is made.
- 3.6. The Chairman of the Council is to be informed of all disciplinary incidents concerning the Clerk.
- 3.7. The panel shall seek advice on the employment and legal implications and shall issue convening and disciplinary letters.
- 3.8. Where a serious allegation has been made by another worker it may be necessary, in exceptional cases, to consider a short period of paid suspension for the Clerk pending a potential disciplinary process. However, it should be emphasised that this course of action should only be considered if absolutely necessary and be kept under review. It should be made clear to the Clerk that the suspension is not a disciplinary sanction. Decisions concerning suspension will be made by the panel.

4.0 Record Keeping

- 4.1. Records will be kept in accordance with the Data Protection Act 1998 (unless there is a legitimate reason not to do so e.g. the protection of witnesses).
- 4.2. Copies of meeting records should be given to the Clerk and their representative for agreement, including any formal minutes that may have been taken.

Records will include:

- The complaint against the Clerk.
- The Clerk's defence.
- Findings from the process, and actions taken including reasons for that action.
- Whether an appeal was made and the outcome of that appeal if relevant.
- Any grievance raised during the disciplinary process.
- Any further relative developments that may arise.

- 4.3. Records relating to disciplinary hearings will be summarised and retained confidentially and anonymously in a file to be kept by the Clerk in order to provide a record of outcomes to enable a consistent approach to be taken in future cases.

5.0 Representation

- 5.1. At all stages, the Clerk has the right to be accompanied by a single companion, who is either a:
 1. work colleague,
 2. employee representative, or
 3. trade union official (a trade union representative who is not an employed official must have been certified by their union as being competent to accompany an employee).
- 5.2 In some circumstances additional aides may be required e.g. an interpreter or signer. Legal representation is not permitted. The Council will not bear costs.
- 5.3 In exercising the statutory right to be accompanied, the Clerk must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. It would not normally be reasonable for the Clerk to insist on being accompanied by a companion whose presence would prejudice the hearing nor would it be reasonable for the Clerk to ask to be accompanied by a companion from a remote location if someone suitable and willing was available on site.
- 5.4 The companion should be allowed to address the hearing to put and sum up the Clerk's case, respond on behalf of the Clerk to any view expressed at the meeting and confer with the Clerk during the hearing. The companion does not, however, have the right to answer questions on the Clerk's behalf, address the hearing if the Clerk does not wish it, or prevent the Council from explaining their case.

6.0 Procedure

6.1. Informal Action

It is anticipated that the majority of cases that involve issues of minor misconduct or performance will be dealt with on an informal basis by the Chairman of the Council and the Chairman of the Finance and General Purposes Committee. If the issues are too significant to be dealt with in this way, or the issues dealt with continue after an informal approach has been taken, the following formal procedure should be followed.

6.2. Formal Action

Establish the facts of the case.

- It is important to consider the need to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases, this will require the holding of an investigatory meeting with the Clerk before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of facts for use at a disciplinary hearing.

- In misconduct cases, where practicable, different people should carry out the investigation and the disciplinary hearing.
- If it is deemed necessary to hold a meeting to establish facts the Clerk will receive a letter inviting them to an investigatory meeting (**Standard Letter 2**). It will be made clear to the Clerk that this is not a disciplinary hearing and that they can be accompanied.
- In cases where a period of suspension with pay is considered necessary, this period should be as brief as possible and should be kept under review and it should be made clear that suspension is not a disciplinary action.

Step 1 – Notification of problem

A formal hearing will be conducted by the panel.

The panel will write to the Clerk stating formally what they are alleged to have done wrong. (**Standard Letter 1**). This letter should provide enough information for the Clerk to understand the nature of the allegation/s and why, if proven this is not acceptable. This letter should also invite the Clerk to a hearing to discuss the problem in more detail. The meeting should be held without unreasonable delay whilst allowing the Clerk reasonable time to prepare their case. It should also confirm the Clerk's right of representation, and enclose copies of any documentation that will be used or produced at the hearing.

Step 2 – Formal Hearing

All parties should make every effort to attend the meeting. The hearing will be chaired by the convener of the panel and attended by the Clerk and their representative if they have exercised their right to be accompanied. It is recognised that in some disciplinary cases it will be necessary to have several formal hearings if a performance or conduct issue recurs at different levels of seriousness.

The process at the hearing will be:

- The panel Chairman will explain the nature and issues surrounding the problem raised and go through all of the documentary and other evidence being used in connection with this issue, including calling witnesses as appropriate.
- The Clerk will then have an opportunity to respond to the allegations made, including asking questions, presenting evidence, calling witnesses and raising any issues in connection with evidence provided by any witnesses called. The Clerk should also be given an opportunity to raise points about any information provided by witnesses.
- Where the Council or the Clerk intends to call relevant witnesses they should give advance notice that they intend to do this.

If the Clerk cannot attend the hearing the panel should be advised as soon as this is known. If this is for circumstances beyond their control e.g. illness, the panel will arrange an alternative hearing date. If the Clerk's representative cannot attend the proposed hearing date, it is allowable for the Clerk to put forward a reasonable alternative date.

If the Clerk is persistently unable or unwilling to attend a disciplinary meeting without good cause, the panel will make a decision on the evidence available.

Step 3 – Outcome

The panel will decide, following this hearing, whether any disciplinary action will be taken in this instance. The Clerk will be advised in writing the outcome of the hearing, and this letter will specify what, if any, action will be taken. (**Standard Letter 3**). Advice may be sought from an independent adviser as to the type of action appropriate in the circumstances. The Panel shall take into account all of the evidence available, with due consideration to any precedents elsewhere in the Council and with consideration of the Clerk's disciplinary and general record.

7.0 Potential Outcomes Of A Hearing Are:

7.1. No Action

The Panel decides, following consideration of the facts, that no further action is required and the matter is dropped and the records of the hearing are destroyed.

7.2. Formal Action - Oral Warning (Performance or Conduct)

If the conduct or performance does not meet acceptable standards, the Clerk will normally be given an oral warning, which will be confirmed in writing in five days. They will be advised:

- Of the reason for the warning
- That this is the first step of the disciplinary procedure
- That they have a right of appeal

Subject to one year's satisfactory performance this warning will be disregarded for disciplinary purposes and the record of the process expunged from the personal file. However, if further problems arise within that time further disciplinary action will be considered.

7.3. Formal Action – Written Warning (Unsatisfactory Performance)

If the Clerk is found to be performing to an unsatisfactory level, the following should be confirmed in writing to them:

- The performance problem/s.
- Stated performance standard or improvement required.
- Timescales identified for addressing the problem, and the date and method of review.

The Clerk will be informed that this is the second stage of the Formal Procedure and their failure to achieve the standard could lead to a final written warning and ultimately dismissal. The Clerk will also be informed of their right of appeal in this process. Subject to two years' satisfactory performance this warning will be disregarded for disciplinary purposes and the records of the process expunged from their personal file.

7.4. Formal Action – Written Warning (Misconduct)

If the Clerk was found to be guilty of misconduct at this level, a written warning will be issued. This will be confirmed in writing, and will specify:

- The nature of the misconduct and the changes required in behaviour
- That this is the second step of the Formal Procedure and their failure to meet this standard in the future could lead to a final written warning and ultimately dismissal.
- That they have the right of appeal.

Subject to two years' satisfactory conduct this warning will be disregarded for disciplinary purposes and the records of the process expunged from the personal file.

8.0 Final Written Warning

8.1. Where the unsatisfactory performance or misconduct continues, or where an issue arises that is significantly serious, a final written warning may be issued (a hearing must have been held to give the Clerk opportunity to present their case). This hearing will be chaired by the Panel Chairman and attended by the Clerk and their representative (if the Clerk has exercised this right). The Clerk will be informed of:

- The reason for the final written warning
- The required improvements in performance or conduct and the consequences of not meeting the required standards in performance or conduct e.g. dismissal
- Their right of appeal in this process.

Subject to two years' satisfactory performance or conduct this warning will be disregarded for disciplinary purposes and the records of the process expunged from their personal file.

8.2. A final written warning will be issued by the panel and where appropriate signed by the Panel Chairman.

9.0 Dismissal Or Other Sanction

9.1. The final stage in the disciplinary process will be either dismissal or another sanction e.g. demotion. Nothing in this procedure precludes the Council from seeking financial redress from the Clerk as appropriate e.g. in cases of theft. The decision to dismiss or, another sanction e.g. demotion, may only be taken by the Full Council. The Clerk will be advised of the reasons for the termination, the effective date of dismissal and their right of appeal in this process.

10.0 The Procedure For Dealing With Gross Misconduct

10.1. Gross misconduct issues are acts or omissions which result in a serious breach of contractual terms. Issues that may fall into this category are:

- Theft, fraud or deliberate falsification of records
- Deliberate damage to Council property, misuse of the Council's name or property, or bringing the Council's name into disrepute
- Fighting, assault, or bullying or harassment

- Incapability through alcohol
- Incapability through illegal or recreational drugs
- The unauthorised use of computer hardware and software, including the downloading of unauthorised software (including games, instant messaging services, etc.), introducing viruses or other malicious software either to the Council's own network or elsewhere, visiting and/or downloading content from offensive sites, or computer hacking.
- Serious negligence causing loss, damage or injury
- Serious acts of insubordination
- Breaches of confidentiality
- Serious infringement of health and safety rules
- Breach of confidence
- Discriminatory practices
- Gross incapability (single act or error made by the Clerk, which is directly related to their genuine or inherent lack of skill or ability in their post)
- Smoking within Council owned buildings, enclosed areas or vehicles

(The above list is not exhaustive.)

- 10.2. If the panel considers the Clerk to be guilty of gross misconduct, and is considering a dismissal without notice, it should be noted that an appropriate investigation should still be undertaken prior to any action being taken and a fair disciplinary process should be followed. A short period of paid suspension may be appropriate. However, it should be emphasised that this course of action should only be considered if absolutely necessary, be kept under review, and it should be made clear to the Clerk that the suspension is not in itself a disciplinary sanction. Decisions concerning suspension will be made by the panel.
- 10.3. The procedure above should be followed in cases of gross misconduct EXCEPT in exceptional cases. Advice should always be sought in possible gross misconduct cases, as there is a statutory provision for exceptional cases whereby the Council can write to the Clerk after terminating their employment, stating the reasons for dismissal and affording them their right of appeal.

11.0 Appeals

- 11.1. The Clerk may appeal against any disciplinary decision and should write to the Chairman of the panel, giving reasons for the appeal, within five working days of receipt of the confirmation of the outcome of the hearing. An appeal may be made on grounds that:
- a) the Clerk believes that a finding or proposed disciplinary sanction is unfair
 - b) new evidence has come to light, or
 - c) in their opinion the disciplinary process was not used correctly.
- 11.2 The appeal will be heard by the Full Council excluding the panel. The appeal should be heard without unreasonable delay and ideally at an agreed time and place. The Clerk will be notified in writing of the arrangements for the hearing (including who will be in attendance) and their right to be accompanied.

11.3 The decision given at appeal is final and will be confirmed in writing within five working days of the date of the appeal hearing. The letter will be signed by the person who was Chairman of the Full Council appeal hearing and which determined the outcome. **(Standard Letter 4)**. Any action imposed may be reviewed at appeal and be upheld, rejected or varied. Gross misconduct or gross incapability dismissals will stand pending any appeal hearing.

12.0 Special Situations

12.1. In the case of action against the Clerk who holds a full time elected office in a recognised Union, the panel will inform the full time Union Officer.

12.2. If the Clerk is charged with, or convicted of, a criminal offence, this is not in itself necessarily a reason for disciplinary action. The individual circumstances of the case should be discussed with the panel, as the criminal law requires different levels of proof. The disciplinary procedure may continue in some cases, even when the outcome is unknown with regard to the criminal charges.

12.3. It is important to note that this procedure must be followed in all cases leading to dismissal, unless in exceptional circumstances the panel has reasonable grounds to believe that by doing so they might be exposed to a significant threat e.g. violent, abusive, or intimidating behaviour or harassment.

12.4 In some circumstances the Clerk may raise a grievance that is related to the case. If this happens the matter would normally be dealt with as part of the disciplinary proceedings. However, the panel can seek advice dependant on the circumstances of each case.

13.0 STANDARD LETTER 1 (Formal Action – Notification of Problem)

DISCIPLINARY

Personal and Confidential

Dear

I write to inform you that in accordance with the Disciplinary Policy there are allegations that you have

You are required to attend a disciplinary hearing to discuss this matter in more detail.

The hearing will be held on [date], at [time]..... in [details of venue].....

You have the right to be accompanied by a work colleague, employee representative trade union or other representative if you wish.

Can you please confirm whether you and your representative, if required by you, can attend this hearing?

Yours sincerely

.....
Panel Chairman
[date]

14.0 STANDARD LETTER 2 (Formal Action – notice of fact finding meeting)

DISCIPLINARY

Personal and Confidential

Dear,

I have received an allegation that, this is a serious matter if proven. In order to establish the facts and if further action is to be taken it will be necessary to hold a meeting.

This meeting will be held on [date], at [time]..... in [details of venue] I must stress that this meeting is not a disciplinary hearing and is merely to establish the facts.

You have the right to be accompanied by a work colleague, employee representative trade union or other representative if you wish.

Can you please confirm whether you and your representative, if required by you, can attend this hearing?

Yours sincerely

.....
Panel Chairman
[date]

15.0 STANDARD LETTER 3 (Formal Action – Outcome of Disciplinary Hearing)

DISCIPLINARY

Personal and Confidential

Dear

I refer to your disciplinary hearing held on at which you were accompanied by

After full consideration, I am writing to advise you that [specify nature of misconduct] was found to be unacceptable and that you are being issued with a [specify nature of action].

(Please see paragraphs 7.3 and 7.4 for further guidance.)

Failure to improve your performance to an acceptable level or a repeat of the incident could lead to further formal action under the Disciplinary Policy, including the termination of your contract.

Subject to two years' satisfactory conduct this [specify nature of action] will be disregarded for disciplinary purposes and the records of the process expunged from your personal file.

You have the right to appeal this decision. Should you wish to exercise your right to appeal, you should write to [name] the panel Chairman, giving reasons for the appeal, within five working days of receipt of this letter.

Yours sincerely

.....
Panel Chairman
[date]

16.0 STANDARD LETTER 4 (Appeals – Outcome of Appeal Hearing)

DISCIPLINARY

Personal and Confidential

Dear

You appealed against the decision of the disciplinary hearing that you be dismissed/subject to disciplinary action [delete as appropriate].

The appeal meeting was held on I am now writing to inform you of the decision taken by Full Council namely that the decision to stands/ the decision to be revoked [specify if no disciplinary action is being taken or what the new disciplinary action is].

You have now exercised your right of appeal and this decision is final.

Yours sincerely

.....
Chairman
[date]