



Tiverton Town Council

Policy Name	Disciplinary & Capability Policy
Date	August 2022
Policy Number	P2
Version	V2
Approved by	Full Council
Author	Linzi Hubbard – Clerical Assistant

1. Introduction

Tiverton Town Council is committed to supporting its employees to achieve the highest standards of work and behaviours which positively reflect on the Council.

2. Purpose

The purpose of this policy and procedure is to help and encourage all employees to achieve and maintain required standards of performance and conduct. The policy and procedure provides a fair and consistent framework through which any issues with performance or conduct can be addressed.

3. Scope

This policy and procedure applies to all staff.

Where an employee is still within the probationary period any issues of performance or conduct will be dealt with under the probationary period procedure detailed in section 5 of this policy

This policy and procedure is non contractual.

4. Process

This policy and procedure is designed to establish the facts quickly and to deal consistently with performance and / or conduct issues.

No formal disciplinary/capability action will be taken against an employee until the case has been fully investigated.

At every stage of the formal disciplinary/capability procedure the employee will be advised of the nature of the complaint against them and will be given the opportunity to have their views fully and fairly considered at a disciplinary hearing before any sanction is imposed.

The employee will have the right to be accompanied by a work colleague or trade union official at all meetings under the formal disciplinary procedure. At the meeting the employee's companion has the right, if the employee wishes;

- Ask questions relating to the disciplinary procedure
- Take notes at the hearing meeting
- Confer with the employee during the meeting
- Help the employee state their case

They cannot however answer any question on the employee's behalf, address the hearing if the employee does not wish it or prevent the Council from explaining their case.

The employee will have the right to appeal against any disciplinary/capability action taken.

Disciplinary/capability action may be implemented at any stage of the procedure if the alleged misconduct or under performance warrant such action.

No employee will be dismissed for a first breach of discipline or performance standards, except in the case of gross misconduct. Dismissal in such circumstances will be without notice or payment in lieu of notice.

All proceedings, witness statements and records will be kept confidential and will be retained in line with the Data Protection Act 1998. Copies of any formal proceedings and sanctions will be kept on the employee's personnel file but will normally be disregarded for disciplinary/performance management purposes after 12 months.

In order to ensure a fair hearing in misconduct cases the stages of the procedure will, where practicable, be carried out by separate personnel. Therefore, the person who carries out the investigation should normally be different from the person who convenes the disciplinary hearing, unless the issue relates to a minor matter where there is no requirement for a detailed investigation stage.

The appeal, in both misconduct and performance cases, will normally be heard by a Senior council member who has not been involved in the process at an earlier stage.

In exceptional circumstances it may be necessary to involve an external individual to hold a hearing under this procedure. Any person appointed under this procedure shall be deemed to have delegated authority from the council.

In the event that the employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. However, if the grievance and disciplinary case are related it will usually be appropriate to deal with both issues concurrently.

4.1 Informal Action

In cases of minor misconduct or under performance managers should deal with matters informally by discussing the issues with the employee and encouraging them to achieve the required standards. This will involve setting clearly defined objectives and/or standards, monitoring them over a reasonable time period and providing training, advice, encouragement and any other forms of support. Such actions are not part of the formal disciplinary process.

Where informal action of this kind is decided upon, the manager will send a follow-up letter to the employee specifying the standards required, how they will be monitored and the review period during which improvements should be achieved and sustained. The letter will explain that the informal action is not formal disciplinary action but that if the employee fails to improve the formal disciplinary procedure may be instigated.

If the required standards of behaviour or performance are met and consistently maintained, no further action will be needed. Records of the informal action will be kept on the employee's personnel file for reference.

If the employee fails to meet and/or maintain the standards required, despite being given appropriate support to do so, the council may extend the review period or proceed to initiate formal disciplinary action.

In certain circumstances it may, with mutual agreement, be helpful to consider using an independent third party to help resolve the problem. In some cases, an external mediator might be appropriate.

Formal Disciplinary/Capability Procedure

4.2 Investigation

If formal disciplinary action is being considered the matter will be investigated.

In misconduct cases the investigator shall obtain a statement from any witnesses they consider to be relevant. The amount of investigation necessary will depend on the facts of the case. In some situations, this may involve an investigatory meeting with the employee, however this is not always necessary. If an investigation meeting is held, the employee will be informed at the outset that the interview is an investigatory interview. There is no right for the employees to be accompanied at an investigatory interview.

In cases of poor performance, the investigatory stage will be the collation of evidence by the manager for use at the disciplinary hearing.

At the end of the investigation the manager will decide whether it is necessary to proceed with disciplinary/capability action in which case the employee will be invited to a disciplinary/capability hearing.

4.3 Suspension

In potentially serious cases it may be appropriate to suspend the employee on full pay until the investigation has been completed and a disciplinary hearing held. Suspension is not a disciplinary sanction in itself. During this time, the employee should remain away from work but will be paid in the usual way. They should be reminded that they remain under the strict duty of fidelity as an employee and must not contact colleagues or third parties who have connections with the council, in whatever capacity, without prior permission during this suspension period.

Any suspension period will be as brief as possible.

4.4 Disciplinary/Capability Hearing

The council will write to the employee specifying the allegations or under performance concerns and inviting them to attend a disciplinary/capability hearing. The employee will be provided with any relevant supporting evidence and a copy of this policy and procedure. This letter will also advise the employee of their right to be accompanied at the hearing by a workplace colleague or trade union official.

Where practicable, the employee will be given at least 48 hours' notice of any disciplinary/capability hearing. The employee must take all reasonable steps to attend the meeting commenced under this procedure. If the employee (or their companion) fails to attend the meeting or gives notice that they cannot attend through circumstances beyond their control, a new date should be set. If the employee fails to attend on a second occasion the hearing may proceed in their absence, or it might be postponed again.

The employee will have the opportunity to state their case at the disciplinary hearing. The council may adjourn the disciplinary/capability proceedings if it appears necessary to do so (for example if they need to gather further information or undertake further investigation). The employee will be informed of the period of any adjournment.

Following the hearing the council will decide whether to impose a sanction under this procedure and the employee will be advised in writing of the outcome. Where practicable the letter will be sent to the employee within five working days of the hearing. The employee will have a right of appeal.

4.5 The Appeal

If the employee wishes to appeal against any sanction, they must do so in writing within five working days of the decision being taken to the employee's senior manager. The employee should set out the full grounds for appeal prior to the meeting.

The appeal will be dealt with impartially. It will be heard by a senior manager as long as they have had no prior involvement in the case. Where this is not practicable, the appeal will be heard by a third party who may or may not be employed by the council.

Where practicable the appeal meeting will be convened within 15 working days. The employee has the right to be accompanied at the appeal meeting by a workplace colleague or trade union official.

The decision will be final and, where practicable, the employee will be informed of the decision in writing within five working days of the appeal hearing.

4.6 Formal Sanctions

It should be noted that for cases of minor misconduct or poor performance, the council will normally go through each stage in turn. In cases of more serious misconduct or poor performance the council may enter the disciplinary procedure at Stage 2 or Stage 3 if appropriate.

Stage 1 – First Written warning for Misconduct

Where informal action has not brought about the desired improvement in conduct, or if the employee's conduct is considered sufficiently serious, a written warning (this is sometimes referred to as a verbal warning) will be given following the disciplinary hearing. This will include details of the misconduct and a statement that,

if there is insufficient improvement after a reasonable period of time, a final written warning may be given. The warning will detail the employee's right of appeal

Or

Stage 1 – Improvement Note for Unsatisfactory Performance

Where informal action has not brought about the desired improvement in performance, an improvement note will be given following the disciplinary hearing. This will include details of the performance problem, the improvement required, the timescale for improvement and review dates. It will also include a statement that, if there is insufficient improvement after a reasonable period of time, a final written warning may be given. The improvement note will detail the employee's right of appeal.

A written record of the warning will be placed on an employee's personnel file and will remain live for a period 6 months; during this period, any additional wrong doing may result in an immediate written warning. After 6 months, subject to satisfactory conduct and performance, the warning will be removed.

Stage 2 – Final Written Warning

If the employee's conduct or performance is still unsatisfactory after the period notified in Stage 1, or if the misconduct/performance issue in question is considered sufficiently serious, a final written warning will be given following the disciplinary/capability hearing. The warning will state that, if there is insufficient improvement within a further period of time, the employee may be dismissed. The warning will detail the employee's right of appeal.

The written warning will normally remain on an employee's personnel file for 12 months. After 12 months, subject to satisfactory conduct and performance, the warning will be removed.

Stage 3 – Dismissal (with notice)

If there is insufficient improvement after the period notified in Stage 2 the employee will be dismissed with the appropriate notice following the disciplinary/capability hearing. A letter will be sent to the employee detailing the reasons for dismissal, the date on which their employment will terminate and the arrangements for the notice period. The letter will detail the employee's right of appeal.

4.7 Gross Misconduct (Dismissal Without Notice)

If, following an investigation and a disciplinary/capability hearing, it is confirmed that the employee has committed an offence or gross misconduct during the course of their employment, the normal consequence will be dismissal without notice. The following list provides examples of offences which are normally disregarded as gross misconduct; however this list is not exhaustive.

- Theft or fraud
- Falsification of any council records

- Possession of illegal drugs in the workplace
- Bullying or physical violence
- Deliberate damage to council property
- Serious incapability through alcohol or being under the influence of illegal drugs
- Serious negligence which causes unacceptable loss, damage to council property or injury to yourself or other employees
- Any form of discrimination or harassment
- Actions which jeopardise or cause breakdown of the client/partner relationship or bring the councils' name into disrepute
- Downloading or viewing pornographic or offensive material from the internet on any device
- Sending messages by any form of media (either on business or personal devices) that contain discriminatory remarks, explicit language, pornographic or offensive material
- Inappropriate use of technology and social media
- Breach of health and safety rules
- Any other inappropriate or persistent acts of insubordination.

4.8 Probationary Period

During the probationary period the disciplinary procedure above does not apply. In the event that the council is concerned about the employee's performance or conduct during the probationary period the employee's manager will explore the issues with the employee, clearly setting out the areas for improvement. If, following this informal action, there is no improvement the following procedure will apply.

- Where the council is unhappy about the employee's performance or conduct or is concerned that they do not meet the requirements of their role, the council will write to them notifying them of the concerns and inviting them to a meeting to discuss the matter.
- A meeting will then be convened to discuss the matter at which the employee has the right to be accompanied by a colleague or trade union official and following which they will be notified of the councils' decision. The employee should note that they are obliged to make all reasonable efforts to attend the meeting convened.
- The employee has the right to appeal against the decision taken and at the appeal meeting they will again have the right to be accompanied and following the meeting they will be informed of the final decision in the matter.

