

**Policy Review – Discipline Policy And Procedure
Resources Committee 11 February 2020**

RECOMMENDED

- (i) that the Discipline Policy and Procedure attached as appendix 1 is the subject of consultation with all staff

and that the Consultation results are reported to Council with the Committee's recommendations that

RECOMMENDED TO COUNCIL

- (ii) that the Discipline Policy and Procedure as attached as appendix 1 is adopted
- (iii) that the Discipline Policy and Procedure is reviewed in 3 years unless legislation or best practice requires an earlier review

Contextual Information

1. The Discipline Policy and Procedure (attached as Appendix 1) sets out the Town Council's approach to dealing with disciplinary matters.
2. The scheme was first approved in February 2013 and was reviewed in February 2016
3. The Policy is presented to Councillors for its periodic review.

Report prepared: 6 February 2020

Contact for further information: The town Clerk Tel 01460 52149 or email town.council@ilminster.gov.uk

**Iminster Town Council
Disciplinary Policy and Procedure
Approved by Council on 19 February 2013,
Reviewed and amended by Council 23 February 2016**



Policy

1. For the Town Council to operate efficiently there must be established standards of behaviour, conduct and performance. The purpose of this policy is to state the rights and responsibilities of the Town Clerk and employees where acceptable standards of conduct have not been maintained. When this is the case, this will be viewed as misconduct and will be dealt with under this Disciplinary Policy.
2. The Town Council's disciplinary rules and procedures aim to ensure fair treatment for all employees and follow statutory procedures relating to disciplinary matters and dismissal.

Context with Other Policies and Procedures

3. This Disciplinary procedure relates to matters regarding conduct, this includes unauthorised absence, non-conformance with absence notification requirements, and persistently poor time-keeping
4. The Absence Management Procedure covers matters arising from / due to poor attendance whether due to ill health or other reasons.
5. The Capability (Performance) Policy and Procedure sets out the framework for resolving issues due to poor performance.
6. It is feasible there will be overlap between two or more policies and procedures; in such cases The Town Clerk will consult with the Chair and Vice-Chair of the Resources Committee in determining which policy and procedure will be followed.
7. 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.
8. Resignations from employment will not usually be accepted from employees who are the subject of a disciplinary process until the process is complete and an outcome determined.
9. At all stages of the disciplinary process, the Town Council will ensure that the persons carrying out the disciplinary hearing and the appeal hearing are different.
10. Decisions made regarding sanctions at the Disciplinary and Appeals hearings by the Town Clerk or Respective Hearing Panel are delegated decisions and do not require ratification by any other Committee or Council.
11. The Town Council's disciplinary procedure may be implemented at any stage if the employee's conduct or performance warrants such action. It is not a mechanical process of warnings and dismissal but one that may be invoked by the Town Council at whatever stage it considers most appropriate, given the circumstances and the seriousness of each case. No formal action will be taken without the employee being informed about the nature of the alleged misconduct and being given the opportunity to make representations.
12. The principles of support and encouragement to improve will apply to all employees, however the formal disciplinary procedure only applies to employees who have been confirmed in their post, it does not apply during an employee's probationary period.

Agenda 13 (g)

13. This policy and procedure shall form part of the employee contract of employment and may be amended by the Town Council from time to time as required by law. Employees will be notified of any changes.
14. The Town Council's disciplinary procedure will be applied in all instances where formal disciplinary action is regarded as necessary, save to the extent that a minor reprimand may be given for any minor act of misconduct by a Town Council employee.
15. The Town Council reserves the right to suspend any employee (on full pay) pending the outcome of any disciplinary investigations or during the disciplinary procedure. Any decision to suspend an employee will be communicated in writing.
16. This policy shall form part of the employee contract of employment and may be amended by the Town Council from time to time as required by law. Employees will be notified of any changes.

Procedure

Introduction

17. The procedure does not apply to:
 - Action taken during or at the end of a probationary period of service (including any extended probationary period of employment)
 - Termination of employment by reason of redundancy or the expiration of a temporary or fixed term contract
 - Termination on grounds of medical incapability

Action against the Town Clerk and Responsible Financial Officer

18. Action under this procedure against the Town Clerk or Responsible Financial Officer can only be taken by Members of the Town Council. In the event that a matter arises in respect of the Town Clerk and Responsible Financial Officer the matter will be referred to the Mayor and the Chair of the Resources Committee. Those two people will agree on a course of action including obtaining any advice that is required, suspension and the appointment of an Investigating Officer. In the event that the conclusion of any investigation is that disciplinary action may be warranted the general provisions of this procedure will apply and any hearing will be conducted by the Grievance, Capability and Disciplinary Committee.

Action against Trade Union Officials

19. 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.

Time Limits

20. Where time limits are referred to in this procedure they may be varied with the consent of both the parties involved.

Initial Action

21. The Town Clerk should be immediately informed of any complaint or allegation about a Town Council employee that may lead to disciplinary action. The Town Clerk will appoint an Investigating Officer (usually the employee's line manager).
In a case of alleged gross misconduct the Town Clerk may consult with the Chair

Agenda 13 (g)

and Vice-Chair of the Resources Committee regarding the appointment of an Investigation officer who is independent of the Town Council.

22. The Town Clerk will inform the Mayor, the Chair and the Vice-Chair of the Resources Committee of the nature of the allegation and the appointment of the Investigating Officer.

Suspension

23. Where it is believed that the matter to be investigated involves gross misconduct or that the continued presence of the employee at work may prejudice or inhibit the investigation or the work of the Town Council, the Town Clerk may immediately suspend the employee from work on full pay.
24. If gross misconduct is not initially suspected or believed to have occurred, but during the course of an investigation, the person conducting it reasonably forms the opinion that that a serious breach of discipline may have occurred, the employee who is the subject of that investigation may be suspended by the Town Clerk.
25. The Town Clerk will report any suspensions immediately to the Mayor, the Chair and the Vice-Chair of the Resources Committee
26. Any decision to suspend will be confirmed in writing to the employee either at the time of the suspension or sent to their home address within three working days. Such written confirmation will give
 - a general indication of the matter under investigation and
 - state that the nature of the suspension is precautionary not disciplinary,
 - state that suspension is not an assumption of guilt and
 - state that the suspension is made pending the outcome of an investigation and possible proceedings.
 - Contain advice that the employee and their family members e.g. parents, spouse, partners and close friends should not be discussing the matter publicly nor with colleagues nor contacting the Council or individual Councillors about the matter and failure to follow the advice may result in further disciplinary action
 - Contain information on how the employee will be kept informed of what is happening and by whom and the date that the first contact will be made.
27. The Town Clerk will regularly review (normally monthly) the continued need for any suspension to ensure that it is not unnecessarily protracted and will notify the suspended employee that the review has taken place, the decision regarding the suspension and the reasoning behind the decision. The Mayor, the Chair and the Vice-Chair of the Resources Committee will be informed that the review has taken place and the outcome.

Investigation

28. The Investigating Officer should first establish the facts promptly before recollections fade, and where appropriate, obtain statements from any available witnesses. A record of these investigations will be kept for later reference.
29. Where the investigation is complex e.g. includes a number of allegations or large numbers of people the Investigating Officer should compile an Investigation Plan. The Investigating Officer will provide at minimum a monthly update for the Town Clerk, the Mayor, the Chair and the Vice-Chair of the Resources Committee.
30. The Investigating Officer may wish to have an investigatory (also called fact finding) meeting with the employee against whom the complaint / allegation has been made. It must be made clear to the employee that this is not a disciplinary

Agenda 13 (g)

meeting and that should the outcome of the investigation be that disciplinary action should be considered they will be invited to attend a formal meeting.

Action on completion of the Investigation

- 31.** Having investigated all the facts, the Investigating Officer should decide whether further action is needed. Actions may include arranging informal coaching or counselling (with a note to the employee's file) or arranging for the matter to be dealt with under the disciplinary procedure **or it may be recommended to the Town Clerk that action under another of the Town Council's Policies and Procedures is appropriate.**
- If the matter involves cases of unacceptable standards of performance, conduct, attitude and attendance, the disciplinary policy applies.
 - If the matter involves sub-standard performance as a result of a lack of the required skills or aptitude, **the Capability (Performance) Policy and Procedure applies.**
 - **If the matter involves attendance the Attendance Management Policy and Procedure applies.**
- 32.** When the investigation is complete the Town Clerk will assess whether an outcome of a disciplinary meeting could be dismissal e.g. the allegation is gross misconduct or the employee has already received a final written warning within the previous 12 months. If the outcome could be dismissal the disciplinary meeting will be with the Grievance, Capability and Disciplinary Committee.

Statement of Grounds for Action and Invitation to Meeting

- 33.** The Town Clerk will write to the employee setting out the alleged misconduct, or circumstances which have led the Town Council to contemplate taking disciplinary action against the employee. The employee will be provided with written particulars of the allegation and any supporting statements or evidence prior to the meeting taking place.
- 34.** The employee will be invited to attend a meeting where the employee will be given an opportunity to state his or her case and answer any allegations. The employee may choose to be accompanied by a work colleague, or union representative where recognised. A copy of the invitation letter will be kept on the employee's personal file.
- 35.** At least **five** working days notice of the disciplinary meeting will be given to the employee.
- 36.** Where the employee's representative is not available on the originally scheduled date, the employee may request an alternative date and time, so long as it is reasonable and it is not more than five working days after the original date.

Failure to attend the disciplinary meeting

- 37.** The employee should take all reasonable steps to attend the disciplinary meeting. If the employee fails to attend, with good reason, the meeting will be rescheduled. Should the employee fail to attend the first without reason or the second meeting, the meeting may proceed in their absence.

Disciplinary Meeting

- 38.** A disciplinary meeting will normally be conducted by the Town Clerk except in cases where the Investigating Officer was the Town Clerk or where the sanction

Agenda 13 (g)

could be dismissal and in those circumstances the disciplinary meeting will be conducted by at least 3 members of the Grievance, Capability and Disciplinary Committee.

39. The Grievance, Capability and Disciplinary Committee may appoint an independent Chair or independent Committee members (i.e. independent of the Town Council) for the purposes of the Disciplinary Hearing if they believe that such an appointment(s) would be in the interest of demonstrating fairness and / or equality.
40. The employee may be accompanied by a work colleague or an appropriately qualified Trade Union representative at a disciplinary meeting. This companion may act as the employee's witness, present the employee's case, sum up and respond on the employee's behalf to any view expressed at the hearing but may not answer questions on the employee's behalf.
41. Where the Grievance, Capability and Disciplinary Committee is conducting the meeting arrangements will be made for an independent person to take written notes of the meeting. Tape recordings are not permitted by either party.
42. At the disciplinary meeting the employee will be given a full explanation of the case against him / her, be informed of the content of any statements provided by witnesses and given the opportunity to ask questions of the Investigating Officer and of any witnesses called to the disciplinary meeting
43. At the disciplinary meeting the employee is entitled to state his / her case in response to the case by made by the Investigating Officer and put forward and explanation of his /her conduct and / or any mitigating factors. The employee may also call any relevant witnesses in support of their defence.
44. The meeting may be adjourned if it appears necessary or desirable to do so (including for the purposes of gathering further information, or for allowing participants to cool off and moderate their behaviour). The employee will be informed of the period of any adjournment.
45. Once all the facts have been disclosed and discussed at the meeting and the employee has been given the opportunity to state his or her case, the person conducting the meeting e.g. Town Clerk or Committee Chair will adjourn the meeting to consider the decision. In reaching the decision the Committee may take into account any previous "live" warnings.
46. The meeting will be reconvened to provide a decision to the employee.
47. The decision will be confirmed in writing at the earliest opportunity. A copy will be held on the personnel file.
48. Those hearing the disciplinary case may be accompanied by an Advisor, whose role is to give advice on issues of procedure, conditions of employment and employment legislation. The Advisor is not part of the decision making process although he or she may be attend during the decision making discussions to give advice. The Advisor should not have participated in the Investigation.

Disciplinary Actions

49. If the decision of the Grievance, Capability and Disciplinary Committee or the Town Clerk is that a disciplinary action is warranted, it will be one of the following:
 - **Oral Warning**

If the employee's conduct does not meet acceptable standards, an oral warning may be given. The employee will be advised in writing of the reason for the warning (see section 'written confirmation of decision' below). A copy of the letter confirming this oral warning will be kept on the

Agenda 13 (g)

employee's personnel file and will be disregarded for disciplinary purposes after 6 months.

- **First Written Warning**

If the misconduct is more serious, or if there is another act of misconduct or performance does not improve following an oral warning after a period of three months, the employee may receive a first written warning (see section 'written confirmation of decision' below). A copy of this written warning will be kept on the employee's personnel file and will be disregarded for disciplinary purposes after 12 months.

- **Final Written Warning**

If the offence is more serious or if conduct does not improve during the timescale of a prior warning (verbal and/or first written), a final written warning may be given to the employee (see section 'written confirmation of decision' below). It will also warn that failure to improve may lead to dismissal. A copy of the written warning will be kept on the employee's personnel file but will be disregarded for disciplinary purposes after 12 months.

- **Dismissal**

If the offence committed is more serious (for example gross misconduct) or if there is a failure to improve conduct following a previous warning, the Committee may decide to dismiss the employee (with or without notice). The decision to dismiss will be confirmed in writing (see section 'written confirmation of decision' below).

Note: Employees will not ordinarily be dismissed for a first "offence" unless the matter amounts to gross misconduct.

50. Alternatives to Dismissal

There may be occasions when due to the nature of the conduct, or extenuating circumstances, employees may be demoted, transferred and/or suspended without pay for up to 10 working days, as an alternative to dismissal. This is at the Committee's discretion and in such cases the employee will also be placed on a final written warning.

Where the Committee considers these sanctions appropriate, the employee's written agreement to accept the sanction as an alternative to dismissal must be obtained.

Summary Dismissal

51. The Town Council reserves the right in appropriate cases to dismiss an employee without notice or payment in lieu of notice in the case of termination for gross misconduct.

Written Confirmation Of Decision

52. In all circumstances, when a decision is made, the following information will be given to the employee in writing at the earliest opportunity, with a copy placed on the employee's personal file:

- whether or not there will be disciplinary action
- the level of disciplinary action
- the areas of concern

Agenda 13 (g)

- the standards of performance/conduct to be achieved
- the timescales for improvement
- the period of review
- the period during which any warning will remain “live”
- the potential consequences should conduct/performance not reach the required standard
- the right of appeal
- any other relevant information
- in cases of dismissal, the employee will be advised of the date on which their employment will end

Appeals

53. If an employee wishes to appeal against a disciplinary decision (including dismissal for gross misconduct), he or she should do so in writing to the Chair of the Appeals Committee within 10 days of the date of the letter informing the employee of the outcome of the Disciplinary Hearing
54. When lodging an appeal the employee should state
 - The grounds of appeal
 - Whether the employee is appealing against the finding that he/she has committed the alleged act(s) of misconduct or against the level of disciplinary sanction imposed.
55. An Appeals Committee meeting will be arranged as soon as reasonably practical after receipt of the appeal from the employee, or at a mutually agreed time and date, this will normally take place within 15 working days of receipt of the employee's written notice of appeal. (The Appeals Committee will comprise 3 Members (quorum as set by Council in the Committee Terms of Reference)
56. The Appeals Committee may appoint an independent Chair or independent Committee members (i.e. independent of the Town Council) for the purposes of the Appeal Hearing if they believe that such an appointment(s) would be in the interest of demonstrating fairness and / or equality
57. At the appeal meeting the employee may be accompanied by a work colleague or an appropriately qualified Trade Union representative. At this meeting, any disciplinary penalty imposed will be reviewed and ultimately a final decision will be made.
58. The decision will be notified to the employee in writing after the meeting and usually within 5 working days.
59. There is no further right of appeal.
60. Where an appeal lies against a decision to summarily dismiss the employee without notice, the Town Council will be under no obligation to pay the employee for any period between the date of the original dismissal and the appeal decision. If the appeal is not upheld the original date of termination will stand. If the appeal is upheld and the employee re-instated, the employee will be entitled to appropriate backpay.
61. Those hearing the appeal may be accompanied by an Advisor, whose role is to give advice on issues of procedure, conditions of employment and employment legislation. The Advisor is not part of the decision making process, but may take notes of the meeting. The Advisor to the original hearing may also advise the person(s) hearing the appeal. In doing so the advisor should not draw on information that he / she may have heard at the original hearing but, which for some reason, is not relied on by either or both parties at the appeal.

Examples of Misconduct

Gross Misconduct

Gross misconduct is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the Town Council. In the event that an employee commits an act of gross misconduct the Town Council will be entitled summarily to terminate the employee's contract of employment without notice or pay in lieu of notice.

This covers any deliberate act or omission committed by an employee, which is detrimental to the good conduct of the business. Examples of acts or omissions that constitute Gross Misconduct and may result in summary dismissal (i.e. immediate dismissal without notice or pay in lieu of notice), include but are not limited to:

- Theft
- Fraud
- Insubordination
- Serious violation of environmental, health, safety and hygiene rules
- Loss of or damage to Town Council property or that of customers, suppliers or other employees
- Fighting, threatening behaviour or physical violence
- A serious violation of e-mail, internet or telephone usage
- Harassment or bullying, including on the grounds of sex, age, race, disability or any other legally protected characteristic

- Falsification of Town Council documents (including time sheets and expenses)
- Being under the influence of alcohol whilst at work
- Being under the influence of, or in possession of, illegal drugs whilst at work
- Violation of the Town Council Equal Opportunities Policy
- A serious conflict of interest with the business activity of the Town Council
- Serious negligence which causes or might cause unacceptable loss, damage or injury

- The use of unauthorised computer software on Town Council hardware or the extraction of files and / or other information from a Town Council database for any use other than Town Council business
- Serious breach of trust and confidence
- Being convicted of a criminal offence which is liable to adversely affect the relationship between the Town Council and the employee or the reputation of the Town Council

General Misconduct

General misconduct includes matters related to unsatisfactory performance (where this is not covered under the capability procedure), timekeeping or attendance.

General misconduct offences generally do not warrant dismissal on the first occasion, other than in the most exceptional circumstances. In most instances, general misconduct offences would normally lead to a formal warning. However, repeated instances of general misconduct can result in dismissal. The following are examples of acts or omissions, which constitute general misconduct; this list is not exhaustive:

- Violation of environmental, health, safety and hygiene rules.
- Misuse of Town Council e-mail, Internet or telephone.
- A conflict of interest with the business activity of the Town Council
- Misuse / lack of care of Town Council provided equipment.
- Unacceptable standard of job performance.
- Unacceptable timekeeping.
- Unauthorised absence.
- Persistent absence.
- Misuse of Town Council or other employees' property.
- Poor upkeep of Town Council vehicles or equipment.
- Failure to complete documentation in a timely manner.
- Failure to follow established policies and procedures.
- Failure to comply with a reasonable order, instruction or contractual requirement.

Policy & Procedure Reviews and Updates

Date	Change
11.09.13	All references to Staffing Committee replaced by Resources Committee in accordance with Council Resolution made on 10.09.13, and added the Mayor to paras 12, 15, 17, 19
23.02.16	New paragraph 3 inserted regarding possibility of overlap between Capability and Disciplinary policies and procedures New paragraph 4 inserted regarding possible overlap of disciplinary and grievance policies and procedures