



Thornaby Town Council – Discipline & Grievance Policy & Procedure

INTRODUCTION

- 1 This procedure is based on and complies with the 2009 ACAS Code of Practice. It is designed to help and encourage all Town Council ("the Council") employees to achieve and maintain high standards of conduct and performance whilst at work or representing the Council. The aim is to ensure consistent and fair treatment for all. Wherever possible, the Council will try to resolve its concerns about employees' behaviour informally, without starting the formal procedure set out below.
- 2 The procedure will be applied fairly, consistently and in accordance with the Equality Act 2010.

PRINCIPLES

- 3 The procedure confirms:
 - the Council will take no disciplinary action against an employee until the facts of the case have been fully investigated
 - the Council recognises that misconduct and unsatisfactory work performance are different issues
 - employees will be informed in writing about the nature of the complaint against them and given the opportunity to state their case
 - employees may be accompanied or represented by a trade union representative or a work colleague at any disciplinary or investigatory meeting. The companion is permitted to address such meetings, to put the employee's case and confer with the employee. The companion cannot answer questions put to the employee, address the meeting against the employee's wishes or prevent the employee from explaining his/her case
 - the Council will give employees reasonable notice of any meetings in this procedure. Employee must make all reasonable efforts to attend. Failure to attend any meeting may result in it going ahead and a decision being taken. An employee who does not attend a meeting will be given the opportunity to be represented and to make written submissions.

- If the employee's companion is not available for the proposed date of the meeting, the employee can request a postponement and can propose an alternative date that is within five working days of the original meeting date
- any changes to specified time limits in the Council's procedure must be agreed by the employee and the Council
- information about an employee's disciplinary matter will be restricted to those involved in the disciplinary process. A record of the reason for disciplinary action and the action taken by the Council is confidential to the employee. The employee's disciplinary records will be held by the Council in accordance with the Data Protection Act 1998
- recordings of the proceedings at any stage of the disciplinary procedure are prohibited, unless agreed as a reasonable adjustment that takes account of an employee's medical condition
- A written record will be kept of the proceedings
- employees have the right to appeal against any disciplinary action. The appeal decision is final
- 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 disciplinary and grievance cases are related it may be appropriate to deal with both issues concurrently
- disciplinary action taken by the Council can include an oral warning, written warning, final written warning or dismissal
- except for gross misconduct when an employee may be dismissed without notice, the Council will not dismiss an employee on the first occasion that it decides there has been misconduct
- if an employee is suspended following allegations of misconduct, it will be on full pay and only for such time as is necessary. Suspension is not a disciplinary sanction. The Council will write to the employee to confirm any period of suspension and the reasons for it.
- the Council may consider mediation at any stage of the disciplinary procedure where appropriate (for example where there have been communication breakdowns or allegations of bullying or harassment). Mediation is a dispute resolution process that requires the Council's and the employee's consent.

EXAMPLES OF MISCONDUCT

4 Misconduct is employee behaviour that can lead to the employer taking disciplinary action. The following list contains some examples of misconduct. The list is not exhaustive. These are examples only:

- unauthorised absence
- poor timekeeping
- misuse of the Council's resources and facilities including telephone, email and internet
- inappropriate behaviour

- refusal to follow reasonable instructions
- breach of health and safety rules

EXAMPLES OF GROSS MISCONDUCT

5 Gross misconduct is misconduct that is so serious that it is likely to lead to dismissal without notice. The following list is not exhaustive and contains some examples of gross misconduct:

- bullying, discrimination and harassment
- incapacity at work because of excessive alcohol or illegal drugs
- violent behaviour
- fraud or theft
- gross negligence
- gross insubordination
- serious breaches of health and safety rules
- serious and deliberate damage to property
- use of the internet or email to access pornographic, obscene or offensive material
- disclosure of confidential information

INFORMAL ACTION

6 Minor misconduct and performance issues will be dealt with informally. In the case of the Clerk being the individual against whom there is a complaint or allegation the matter should be handled discreetly by members of the Staffing Committee and involve an informal confidential meeting initially. However, where the matter is more serious or informal action has not brought about the necessary improvement the following procedure will be used:

DISCIPLINARY INVESTIGATION

7 There will be an investigation of the facts. The Council's Staffing Committee will appoint an Investigator who will be independent of the Council and he/she will be responsible for undertaking the disciplinary investigation. The Investigator will be appointed as soon as possible after the allegations have been made. The Investigator will be asked to submit a report within 20 working days of appointment. In cases of alleged minor misconduct or performance issues, the appointment of an investigator may not be necessary and the Council may deal with the matter as paragraph 6 above or decide to commence disciplinary proceedings at the next stage (see paragraph 15).

- 8 The Staffing Committee will first notify the employee in writing of the alleged misconduct and ask him/her to attend a meeting with the Investigator. The employee will be given at least five working days' notice of the meeting with the Investigator so that he/she has reasonable time to prepare for it. The letter will explain the investigatory process and that the meeting is part of that process. The employee will be provided with a copy of the Council's Disciplinary Procedure. The Council will also inform the employee that when he/she meets with the Investigator, he/she will have the opportunity to comment on the allegations of misconduct.
- 9 Employees may be accompanied or represented by a trade union representative or a work colleague at any investigatory meeting.
- 10 If there are other persons (eg employees, councillors, members of the public or the Council's contractors) who can provide relevant information, the Investigator will try to obtain it from them in advance of the meeting with the employee.
- 11 The Investigator has no authority to take disciplinary action. His/her role is to establish the facts of the case as quickly as possible and prepare a report that recommends to the Staffing Committee whether or not disciplinary action should be taken.
- 12 The Investigator's report will contain his/her recommendations and the findings on which they were based. He/she will recommend either:
- the employee has no case to answer and there should be no further action under the Council's Disciplinary Procedure
 - the matter is not serious enough to justify further use of the Disciplinary Procedure and can be dealt with informally or
 - the employee has a case to answer and there should be action under the Council's Disciplinary Procedure.
- 13 The Investigator will submit the report to the Staffing Committee which will decide whether further action will be taken.
- 14 If the Staffing Committee decides that it will not take disciplinary action, it may consider whether mediation would be appropriate in the circumstances.

THE DISCIPLINARY MEETING

- 15 If the Staffing Committee decides that there is a case to answer, this will be reported to the Council who will establish a **Hearing** Panel for the purpose, consisting of three Councillors, independent of the Staffing Committee. **The Council will determine terms of reference for the Hearing Panel.** The **Hearing** Panel will appoint a Chairman from one of its Members. The Investigator shall not sit on the **Hearing** Panel. No Councillor with direct involvement in the matter shall be appointed to the **Hearing** Panel. The employee will be invited, in writing, to attend a disciplinary meeting with the **Hearing** Panel.

The **Hearing** Panel's letter will confirm the following:

- the names of its Chairman and other two Members
- details of the alleged misconduct, its possible consequences and the employee's statutory right to be accompanied at the meeting
- a copy of the investigation report, all the supporting evidence and a copy of the Council's Disciplinary Procedure
- the time and place for the meeting. The employee will be given reasonable notice of the hearing (at least 15 working days) so that he /she has sufficient time to prepare for it
- that witnesses may attend on the employee's and the Council's behalf and that both parties should inform each other of their witnesses' names at least five working days before the meeting
- that the employee and the Council will provide each other with all supporting evidence at least five working days before the meeting. If witnesses are not attending the meeting, witness statements will be submitted to the other side at least five working days before the hearing
- that the employee may be accompanied by a companion, either a trade union representative or a work colleague

The disciplinary meeting will be conducted as follows:

- the Chairman will explain the purpose of the meeting
- the Investigator will present the findings of the investigation report
- the Chairman will set out the Council's case and present supporting evidence (including any witnesses)
- the employee (or the companion) will set out his/her case and present evidence (including any witnesses)
- any member of the panel and the employee (or the companion) may question the Investigator and any witness
- the employee (or the companion) will have the opportunity to sum up his/her case
- the Chairman will provide the employee with the panel's decision with reasons, in writing, within five working days of the meeting. The Chairman will also notify the employee of the right to appeal the decision.

- the disciplinary meeting may be adjourned to allow matters that were raised during the meeting to be investigated by the panel.

DISCIPLINARY ACTION

16 If the **Hearing** Panel decides that there should be disciplinary action, it may be any of the following:

Oral warning

An oral warning is issued for most first instances of minor misconduct. The Council will notify the employee:

- of the reason for the warning, the improvement required (if appropriate) and the time period for improvement
- that further misconduct/failure to improve will result in more serious disciplinary action
- of the right to appeal
- that a note confirming the oral warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for six months.

Written warning

If there is a repetition of earlier misconduct which resulted in an oral warning, or for different and more serious misconduct, the employee will normally be given a written warning. A written warning will set out:

- the reason for the written warning, the improvement required (if appropriate) and the time period for improvement
- that further misconduct/failure to improve will result in more serious disciplinary action
- the employee's right of appeal
- that a note confirming the written warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for 12 months.

Final written warning

If there is further misconduct during the period of a written warning or if the misconduct is sufficiently serious, the employee will be given a final written warning. A final written warning will set out:

- the reason for the final written warning, the improvement required (if appropriate) and the time period for improvement

- that further misconduct/failure to improve will result in more serious disciplinary action up to and including dismissal
- the employee's right of appeal
- that a note confirming the final written warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for 18 months.

Dismissal

The Council may dismiss:

- for gross misconduct
- if there is no improvement within the specified time period in the conduct which has been the subject of a final written warning
- if another instance of misconduct has occurred and a final written warning has already been issued and remains in force.

17 The Council will consider very carefully a decision to dismiss. If an employee is dismissed, he/she will receive a written statement of the reasons for his/her dismissal, the date on which the employment will end and details of his/her right of appeal.

18 If the **Hearing** Panel decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file. Action imposed as a result of the disciplinary meeting will remain in force unless and until it is modified as a result of an appeal.

THE APPEAL

19 An employee who is the subject of disciplinary action will be notified of the right of appeal. His/her written notice of appeal must be received by the Council within five working days of the employee receiving written notice of the disciplinary action and must specify the grounds for appeal.

20 The grounds for appeal include;

- a failure by the Council to follow its disciplinary procedure
- the **Hearing** Panel's decision was not supported by the evidence
- the disciplinary action was too severe in the circumstances of the case
- new evidence has come to light since the disciplinary meeting.

- 21 The Appeal will be heard by an Appeal Panel established for the purpose by the Council. **The Appeal Panel will be set up at the same time as the Hearing Panel. The Council will determine terms of reference for the Appeal Panel.** The Panel will consist of three Councillors, independent of the Staffing Committee and the **Hearing** Panel and any Councillor directly involved with the case. The Appeal Panel will appoint a Chairman from one of its Members.
- 22 The employee will be notified, in writing, within 10 working days of receipt of the notice of appeal of the time, date and place of the appeal meeting. The employee will be advised that he/she may be accompanied by a companion, either a trade union representative or a work colleague.
- 23 At the appeal meeting, the Chairman will:
- explain the purpose of the meeting, which is to hear the employee's reasons for appealing against the decision of the **Hearing** Panel
 - explain the action that the Appeal Panel may take.
- 24 The employee (or his companion) will be asked to explain the grounds for appeal.
- 25 The Chairman will inform the employee that he/she will receive the decision and the Panel's reasons, in writing, within five working days of the appeal hearing.
- 26 The Appeal Panel may decide to uphold the decision of the **Hearing** Panel, substitute a less serious sanction or decide that no disciplinary action is necessary. If it decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file.
- 27 If an appeal against dismissal is upheld, the employee will be paid in full for the period from the date of dismissal and continuity of service will be preserved.
- 28 The Appeal Panel's decision is final.**

THORNABY TOWN COUNCIL'S GRIEVANCE PROCEDURE.

INTRODUCTION

1. This procedure is based on and complies with the 2009 ACAS Code of Practice.
2. It aims to encourage and maintain good relationships between the Town Council ("the Council") and its employees by treating grievances seriously and resolving them as quickly as possible. It sets out the arrangements for employees to raise their concerns, problems or complaints about their employment with the Council. The policy will be applied fairly, consistently and in accordance with the Equality Act 2010.
3. Many problems can be raised and settled during the course of everyday working relationships. Employees should aim to settle most grievances informally.
4. This procedure confirms:
 - employees have the right to be accompanied or represented at a grievance meeting or appeal by a trade union representative or work colleague. The companion will be permitted to address the grievance/appeal meetings, to present the employee's case for his/her grievance/appeal and to confer with the employee. The companion cannot answer questions put to the employee, address the meeting against the employee's wishes or prevent the employee from explaining his/her case
 - the Council will give employees reasonable notice of the date of the grievance/appeal meetings. Employees and their companions must make all reasonable efforts to attend. If the employee's companion is not available for the proposed date of the meeting, the employee can request a postponement and can propose an alternative date that is within five working days of the original meeting date.
 - any changes to specified time limits must be agreed by the employee and the Council
 - an employee has the right to appeal against the decision about his/her grievance. The appeal decision is final
 - information about an employee's grievance will be restricted to those involved in the grievance process. A record of the reason for the grievance, its outcome and action taken is confidential to the employee. The employee's grievance records will be held by the Council in accordance with the Data Protection Act 1998
 - recordings of the proceedings at any stage of the grievance procedure are prohibited, unless agreed as a reasonable adjustment that takes account of an employee's medical condition
 - A written record will be kept of the proceedings

- 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
- if a grievance is not upheld, no disciplinary action will be taken against an employee if he/she raised the grievance in good faith
- the Council may consider mediation at any stage of the grievance procedure where appropriate, (for example where there have been communication breakdowns or allegations of bullying or harassment). Mediation is a dispute resolution process which requires the Council's and the employee's consent.

INFORMAL GRIEVANCE PROCEDURE

5. The Council and its employees benefit if grievances are resolved informally and as quickly as possible. As soon as a problem arises, the employee should raise it with the Chairman to see if an informal solution is possible. Both should try to resolve the matter at this stage. If the employee does not want to discuss the grievance with the Chairman, the employee should contact the Vice Chairman or, if appropriate, another Member of the Council.

FORMAL GRIEVANCE PROCEDURE

6. If it is not possible to resolve the grievance informally, the employee may submit a formal grievance. It should be submitted in writing to the Chairman of the Council or, if appropriate, the Vice Chairman or another Member of the Council.

Investigation

7. The employee's grievance will be referred to the Staffing Committee who will investigate the matter before the grievance meeting which may include interviewing others (e.g. employees, councillors or members of the public).

Notification

8. Within 10 working days of the Council receiving the employee's grievance, the employee will be asked, in writing, to attend a grievance meeting with the Staffing Committee. The letter will include the following:
- a summary of the employee's grievance based on his/her written submission
 - the date, time and place for the meeting. The employee will be given reasonable notice of the meeting which will be within 25 working days of when the Council received the grievance
 - the employee's right to be accompanied by a trade union representative or work colleague
 - a copy of the Council's Grievance Procedure
 - confirmation that, if necessary, witnesses may attend on the employee's behalf and that the employee should provide the names of his/her witnesses at least five working days before the meeting
 - confirmation that the employee will provide the Council with any supporting evidence at least five working days before the meeting.

The Grievance Meeting

9. At the grievance meeting:
- the employee (or companion) will set out the grievance and present the evidence
 - the Chairman will ask the employee what action he/she would like the Council to take
 - any Member of the Committee and the employee (or the companion) may question any witness
 - the employee (or companion) will have the opportunity to sum up the case
 - the Chairman will provide the employee with the Committee's decision, in writing, within five working days of the meeting. The letter will notify the employee of the action, if any, that the Council will take and of the employee's right to appeal
 - a grievance meeting may be adjourned to allow matters that were raised during the meeting to be investigated by the Committee.

The Appeal

10. If an employee decides that his/her grievance has not been satisfactorily resolved by the Committee, he/she may submit a written appeal to the Staffing Committee. An appeal must be received by the

Council within five working days of the employee receiving the Committee's decision and must specify the grounds of appeal.

11. Appeals may be raised on a number of grounds, e.g.:
 - a failure by the Council to follow its Grievance Procedure
 - the decision was not supported by the evidence
 - the action proposed by the Committee was inadequate/inappropriate
 - new evidence has come to light since the grievance meeting.
12. The Appeal will be heard by an Appeal's Panel established for the purpose by the Council, which will consist of three Members of the Council, independent of the Staffing Committee and any Member who has previously been involved in the case. The Appeal Panel will appoint a Chairman from one of its Members.
13. The employee will be notified, in writing, within 10 working days of receipt of the appeal of the time, date and place of the appeal meeting. The meeting will take place within 25 working days of the council's receipt of the appeal. The employee will be advised that he/she may be accompanied by a trade union representative or work colleague.
14. At the appeal meeting, the Chairman will:
 - explain the purpose of the meeting, which is to hear the employee's reasons for appealing against the decision of the Staffing Committee
 - explain the action that the Appeal Panel may take.
15. The employee (or his/her companion) will be asked to explain the grounds of his/her appeal.
16. The Chairman will inform the employee that he/she will receive the decision and the Panel's reasons, in writing, within five working days of the appeal meeting.
17. The Appeal Panel may decide to uphold the decision of the Staffing Committee or substitute its own decision.
18. **The decision of the Appeal Panel is final.**