

Crowborough Town Council

Disciplinary policy and procedure – November 2008

Disciplinary Policy

1. **Purpose**

- 1.1 This disciplinary procedure is designed to ensure that all employees understand the behaviour expected of them and the action that may be taken should their behaviour fall beneath such standards.

2. **Scope**

- 2.1 This procedure applies to all employees of Crowborough Town Council.
- 2.2 No disciplinary action beyond a verbal warning will be taken against an accredited Trade Union representative until the case has been discussed, either in person or by telephone, HR Manager with the full time officer of the appropriate Trade Union. If Clerk, Chairman of Personnel committee.
- 2.3 Probationary staff are subject to separate rules which are set out in section 4.

3. **General Principles**

- 3.1 The aim of this policy and procedure is to help and encourage all employees to achieve and maintain appropriate standards of conduct.
- 3.2 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty may be dismissal without notice or payment in lieu of notice.
- 3.3 Disciplinary action is the responsibility of all managers however only the Town Clerk or a three person panel of the Personnel Committee may suspend or dismiss staff.
- 3.4 In order to comply with the legal requirements as set out in **Employment Act 2002**, all stages of this procedure must be followed. These incorporate the standard statutory procedure which is detailed in the **ACAS Code of Practice** [Advisory, Conciliation and Arbitration Service].
- 3.5 At all formal stages of the procedure the employee has the right to be accompanied by a workplace colleague or recognised Trade Union representative.

- 3.6 Before any disciplinary action takes place a full investigation must normally be completed by the Town Clerk. If it refers to the Town Clerk, it will be carried out by a three person panel of the Personnel committee.
- 3.7 An employee must be given written notice of any complaint or allegation against them as soon as is reasonably practicable. They must also be invited to a meeting to discuss the allegations and given the opportunity to state their case in the course of the investigation and at any disciplinary hearing.
- 3.8 The employee must be advised of the outcome of any investigation.
- 3.9 The employee has the right to appeal against a disciplinary decision or penalty.

4. **Probationary Staff**

- 4.1 Employees who are not, immediately prior to employment, employed by another local authority or recognised associated employer (as set out in the **Redundancy Payments (Continuity of Employment in Local Government, etc) (Modification) Order 1999 as amended.**) for at least six months, are subject to a probationary period of employment of six months.
- 4.2 Their line manager must, at the start of employment, make it clear to the employee that continued employment after six months is dependant on satisfactory conduct and performance. Where appropriate, the manager may extend the probationary period up to 12 months if there is concern about conduct or performance.
- 4.3 The manager must ensure there are three monthly performance reviews and that probationary reports are completed.
- 4.4 If progress interviews indicate that dismissal is likely before the end of, or at the expiry of the probationary period, the employee must be warned and this warning recorded in the probationary reports. The employee should be given a copy of the report. This warning should take place at a formal meeting, with sufficient notice (not less than 5 working days) given to enable the employee to be accompanied by a recognised Trade Union Representative or work based colleague should they so wish.
- 4.5 If the employee, by reason of conduct or unsatisfactory performance, including capability, is unsuitable for continued employment, the manager must make the recommendation for dismissal to the Town Clerk before their appointment is confirmed as permanent.
- 4.6 The Town Clerk should make sufficient enquiries to satisfy themselves that dismissal is fair and reasonable in all the circumstances.

- 4.7 The Town Clerk should invite the employee to a meeting and explain the reasons for his/her dismissal. The employee should be given the right to be represented by either a recognised Trade Union Representative or work based colleague and should be given an opportunity to state their case.
- 4.8 The employee should be advised of their right of appeal which should be heard by a three person panel of the Personnel Committee.
- 4.9 The employee will normally receive their statutory or contractual notice (whichever is the greater) unless gross misconduct has been committed, in which case no notice will be given.
- 4.10 This process should be clearly documented throughout.

5. **Informal approach**

- 5.1 It is the responsibility of all managers to monitor their staff and ensure that all employees understand what is expected of them with regard to both work standards and conduct.
- 5.2 An informal approach can often be a more effective way of dealing with problems initially than a disciplinary interview. Managers should meet with staff to discuss the problems, what needs to be done and any mitigating circumstances that may need to be considered.
- 5.3 If having met with a member of staff to discuss problems and there is no apparent improvement, a verbal warning (Preliminary Stage) under the Disciplinary Procedure may be given and the employee advised accordingly.
- 5.4 It is possible that a Manager may need to discuss problems more than once before issuing a verbal warning.

6. **Setting and Maintaining Standards**

- 6.1 It is essential that all staff are made aware of the standards of conduct and behaviour expected of them.
- 6.2 Such standards are communicated via a number of mechanisms including:
- recruitment packs
 - information provided at interview
 - induction
 - one-to-one discussions
 - review process
 - policies and procedures

6.3 It is the responsibility of Managers to make staff aware of what is expected of them, but also, and as importantly, to act as a role model in setting and maintaining high standards.

7. Criminal Offences Committed In and Outside of Employment

7.1 Charges brought against an individual by other parties, including the Police, and investigations by the Police are procedurally separate from this Disciplinary Procedure.

7.2 Action may be taken against an employee irrespective of Court proceedings. It does not automatically follow that an employee will be disciplined if found guilty in Court or taken into custody. Similarly, disciplinary action may be taken even if an employee has been found not guilty in the Courts of a criminal offence or if charges are not pressed.

7.3 In all such cases the Town Clerk will fully investigate the facts as far as possible, and come to a view as to whether the conduct impacts on the Council sufficiently to warrant invoking the Disciplinary Procedure. The Town Clerk may take external advice on this or raise with three person panel of the Personnel committee, however if they are involved in these discussions they may not be involved in any further disciplinary action including at appeal.

7.4 A three person Panel of the Personnel Committee must be advised where there is any suspicion of fraud or corruption.

Disciplinary Procedure

8. Verbal Warning (Preliminary Stage)

8.1 The line Manager will carry out such preliminary enquiries as are necessary to help decide whether there is a case to answer. At this stage the employee should be advised of the allegations and that they are being looked into.

8.2 In doing so, the Manager should talk to any witnesses to the alleged misconduct and look at any written or other evidence.

8.3 The employee will be called to a meeting where they will be told what is alleged and be given the opportunity to state their case. The employee will be given reasonable notice of the meeting normally 5 working days and will be given the right to be represented by either a work place colleague or recognised Trade Union Representative.

8.4 After considering all the matters raised, the Manager will decide whether it is appropriate to issue a verbal warning.

- 8.5 It is essential that if a verbal warning is given the employee understands that this is the preliminary stage of implementing the Disciplinary Procedure and that further misconduct of a similar nature could lead to more serious warnings given and ultimately could lead to dismissal.
- 8.6 The verbal warning should be given in a private environment with the problem being drawn to the employee's attention in a constructive manner.
- 8.7 The employee will be told of the expected standards of conduct required and when the matter will be reviewed again. Should further problems arise before the review date, the Manager may take further action before the timescale has elapsed. The employee should be made aware that this could happen.
- 8.8 A file note should be written, copied to the employee and held on the Personnel file pending review. The note should detail the nature of misconduct for which a verbal warning has been issued, the required standard of conduct, any training, support or additional supervision that is to be provided, and the likely consequence of further breaches of conduct.
- 8.9 A copy of the warning will normally remain on the personal file for 3 months after which time it will be disregarded for disciplinary purposes (subject to paragraph 12 of the procedure).
- 8.10 The employee has the right to appeal to the Town Clerk or to a three person Panel of the Personnel committee if the verbal warning has been given by the Town Clerk. Appeals must be lodged with the Town Clerk within 10 working days of the date of the issue of the Verbal Warning.

9. **Investigation**

- 9.1 Where, following an initial review, the line manager considers that it is inappropriate to issue a verbal warning, because the alleged offence may require more than a verbal warning, (or where one has previously been issued for the same alleged misconduct) a full and impartial investigation must be undertaken to determine the facts.
- 9.2 The Town Clerk will nominate an appropriate manager to lead the investigation. In cases relating to the Town Clerk or where otherwise considered appropriate this investigation may be carried out by an external consultant. Exceptionally the investigation may be carried out by a three person Panel of the Personnel committee, however it should be born in mind that this would reduce the number of Councillors available for any subsequent hearing or appeal.

- 9.3 The employee under investigation will be informed that an investigation is being carried out, the nature of the complaint under investigation, together with the name of the person leading the investigation. This must be confirmed in writing together with a copy of the Council's Disciplinary Procedure.
- 9.4 The purpose of the investigation is to establish the facts. The size and make up of the investigation team will depend on the seriousness and complexity of the allegations. Anyone connected with the allegations should not be involved in conducting the investigation. A member of the investigation team should not hear any subsequent disciplinary hearing. The investigating officer may present the management case at the disciplinary hearing or be used as a witness on relevant technical or specialist matters.

Suspension

- 9.5 In some incidences of alleged gross misconduct it may be necessary for the employee to be suspended and this should be undertaken as soon as the Manager is aware of the situation.
- 9.6 Where an employee is to be suspended, they should be informed that such suspension is a neutral action and is not in itself a disciplinary sanction.
- 9.7 An employee can only be suspended by the Town Clerk or a three person Panel of the Personnel committee. The employee should be offered the opportunity to be represented by a recognised Trade Union Representative or work based colleague, when being suspended. However, suspension should not be delayed due to the availability of a representative to accompany the employee.
- 9.8 Suspension will be:
1. on full pay
 2. for a specified initial period, this may be extended for further periods
 3. clear as to the conditions that may apply, for example entry to Town Council premises, contact with Town Council staff or councillors, recording any periods of sickness or of annual leave during the suspension etc.
 4. subject to regular review in light of changed circumstances and for no longer than necessary,
 5. confirmed in writing to the employee stating the reason(s) for the suspension, its likely duration, and any conditions that apply
 6. a copy of the letter confirming suspension copied for the employee's representative.
- 9.9 The employee and any witnesses will be required to attend separate investigatory meetings. A record of any evidence disclosed and

outcomes of the meetings should be kept, together with any supporting documents as possible evidence at any subsequent disciplinary hearing (if appropriate). The employee being investigated has the right to be represented at the investigatory meeting, by either a recognised Trade Union Representative or a work based colleague.

- 9.10 Notes of the meeting will either be taken in writing or on tape. If a taped record is made, a copy will be given to the employee. If written notes are taken the employee will be given a copy and asked to confirm their accuracy.
- 9.11 Once the investigation is complete, the line manager will decide whether there is a case to answer. If it is found that there is no case to answer, documents relating to the matter will not be placed on the employee's personal file. Where this is the case, the employee will be reinstated (if suspended) with no loss of normal pay.
- 9.12 If it is found that there is a case to answer, a formal disciplinary hearing will be set up and the employee will be called to answer the allegations.

10. **Disciplinary Hearing**

- 10.1 The hearing will be conducted by the line manager. The manager will notify the employee in writing of the intention to hold a disciplinary hearing and the letter will contain the following:-
 - (a) The nature of the alleged offence, conduct or complaint.
 - (b) The date, time and place of meeting. The employee will be given a minimum of 5 working days notice (unless mutually agreed to shorten the period) of the date and time of the meeting between receiving the letter and the commencement of the meeting.
 - (c) That the employee has the right to be represented at the hearing by either a recognised Trade Union representative or a workplace colleague.
 - (d) The names of any witness intended to be called and copies of any documents or statements which will be produced. This includes the investigation report.
 - (e) The names of all those who will be present at the hearing.
 - (f) That the offence, if proved may result in formal disciplinary action being taken. Where the allegations are, prima facie, bordering on gross misconduct or where the employee already has live a final warning, the letter should indicate that the outcome could be dismissal from employment.

- (g) the requirement that the employee advise the manager of the name of their representative and the names of any witnesses to be called and
 - (h) the requirement to provide copies of any documentation material prior to the hearing
- 10.2 Attached to the letter will be a copy of the Council's Disciplinary Procedure. A copy of both will be provided for the employee's representative.
- 10.3 The employee must be given at least 5 working day's notice of the hearing, unless agreed with the employee that it can be held sooner.
- 10.4 Any documentation intended to be used at the hearing must be provided to the employee at least 5 working days before the hearing. A separate copy of all documentation will be provided at the same time for the employee's representative. The employee is required to provide details set out in 10.1 (g) and (h) at least 2 working days before the hearing.
- 10.5 At the request of the employee, the hearing will be deferred on one occasion to allow the employee's preferred representative to be briefed and to attend. The hearing will not normally be re-arranged more than once and following one deferment may proceed in the absence of the employee or of their representative.
- 10.6 The hearing will follow the stages outlined in the following section 'Conducting a Disciplinary Hearing'.
- 10.7 Following the disciplinary hearing, the Town Clerk will write to the employee.

This letter will contain the following points:-

- (a) the allegations addressed at the meeting
- (b) matters taken into account in reaching the decision
- (c) the decision on the findings of the allegations
- (d) any mitigating circumstances put forward by the employee
- (e) the period that any warning will stay live for
- (f) full particulars of what is expected of the employee in future in terms of behaviour, performance, attitude etc and the time scale in which improvements must be made
- (g) any actions to be undertaken by Management

- (h) that further occurrences of the allegations complained of or any of a similar nature will result in further disciplinary action. Where a final warning has been issued it will be made clear that further occurrences of the allegations complained of or any of a similar nature will, after a further disciplinary hearing, result in dismissal.
- (l) the employee's right of appeal against the decision of the Manager, together with time scales for exercising these rights
- (j) that if there is no need to take further disciplinary action during the time period specified under (e) above, the warning will be expunged from the employee's record.

11. **Stages in the Procedure**

11.1 (a) **Initial Warning**

- (i) Normally issued by the employee's line manager and given for minor matters.
- (ii) Right to appeal to the manager of the Authorised Manager who issued the warning, where the warning has been issued by the Town Clerk the appeal will be heard by a three person Panel of the Personnel committee. Appeals must be lodged with the Town Clerk within 10 working days of the date of receipt of the letter notifying the outcome of the disciplinary hearing.
- (iii) A copy of the warning will normally remain on the personal file for 6 months after which time it will be disregarded for disciplinary purposes (subject to paragraph 12 of this procedure).

11.2 (b) **Severe Warning**

- (i) Normally issued for more serious matters or repetition or continuation of an offence for which a first warning was issued and remains live.
- (ii) Right of appeal as for Initial warning.
- (iii) A copy of the warning will normally remain on the personal file for 12 months after which time it will be disregarded for disciplinary purposes (subject to paragraph 12 of the procedure).

11.3 (c) **Final Warning**

- (i) Normally issued by the Town Clerk. Final Warnings are given where there has been a serious breach of discipline or where there has been a repetition or continuation of an offence for which a second warning has been issued and remains live.

- (ii) Right of appeal to a three person Panel of the Personnel Committee whichever did not issue the final warning.
- (iii) Appeals must be lodged with the Town Clerk within 10 working days of the date of receipt of the letter notifying the outcome of the disciplinary hearing.
- (iv) A copy of the warning will normally remain on the personal file for 18 months after which time it will be disregarded for disciplinary purposes (subject to paragraph 12 of the procedure).

All warnings will be in writing.

11.4 (d) **Dismissal/Summary Dismissal/or Downgrading**

- (1) Normally issued by the Town Clerk or a three person Panel of the Personnel Committee.
- (2) In cases of transfer to a lower graded post, the employee will be expected to undertake the full range of duties for that post. There will be no protection of salary where a loss of pay is incurred as a result of the transfer/down grading.
- (3) Dismissal with notice will normally arise where a final warning has previously been issued. An employee may also be dismissed with notice where previous warnings have not been issued and where dismissal without notice (summary dismissal) is not appropriate.
- (4) The right of appeal for any of these sanctions is a three person panel of the Personnel committee made up of Members who did not dismiss or downgrade. Appeals must be lodged with the Town Clerk within 10 working days of the date of receipt of the letter notifying the outcome of the disciplinary hearing.
- (5) Employees dismissed with or without notice will not receive salary between the date of termination of employment and the hearing of the appeal. If the employee is reinstated following appeal, they will receive full back pay to the date of termination and there will be no loss of continuous service or other benefit.

12. **Lapsed Warnings**

- 12.1 Previous warnings, which have lapsed, will normally be disregarded where further offences or work problems occur. However, they may be taken into account where the same or similar offence is alleged at any time in the future, in order to rebut evidence submitted by the employee that they did not know:-

1. that such conduct amounted to a disciplinary offence, or
2. in order to determine an appropriate penalty where the employee makes representations about their previous service which are inconsistent with their previous disciplinary record.

Disciplinary Rules

The following are examples of behaviour or actions which are considered to be gross misconduct and will usually, if proven and following a disciplinary hearing, result in summary dismissal. **The list is illustrative and not exhaustive.**

1. Fighting, physical assault or causing an affray when the employee is on duty.
2. Theft of Council money or property or that belonging to a member of staff or the public.
3. Being under the influence of illegal substances or alcohol on duty
4. Loss of Council property resulting from negligent action(s).
5. Gross insubordination.
6. Deliberate destruction or damage to Council property.
7. Fraudulently claiming money or other resources from the Council.
8. Behaviour which seriously risks the health or safety of another employee of the Council or a visitor or other person legitimately on Council premises or at the officer's work place.
9. Sexual misconduct at work.
10. Severe or persistent bullying and/or harassment.
11. Falsification of a qualification which is a stated requirement of the employment or which results in financial gain.
12. Falsification of records or claims for personal gain.
13. Failing or refusing to comply with a reasonable order, instruction or contractual requirement.
14. Conduct likely to bring discredit to the Council's business or organisation.
15. Sexual, religious or racial harassment of colleagues.
16. Breach of trust
17. The deliberate accessing and/or downloading of pornographic material on the internet from council equipment.
18. Abuse of the Council's Internet Policy.

Procedure at a Disciplinary Hearing

1. The Chair will:
introduce those present and their role in the proceedings (three Councillors plus expert)
confirm the employee's right to be accompanied
confirm the nature of the hearing and the procedure to be followed
outline the allegations against the employee, as notified in the letter
2. The management case will then be made by the manager, including calling witnesses. Witnesses should appear one at a time and may only be present whilst giving evidence or being questioned.
3. The employee and/or their representative may ask questions of the manager presenting the case and of any witnesses. Questions must relate to the evidence presented at the hearing. The Chair may ask questions of the manager and/or of the witnesses.
4. The Chair will invite the employee or their representative to present their case, including calling witnesses.
5. The manager presenting the management case may ask questions of the employee or their witnesses. The Chair may ask questions of the employee or their witnesses.
6. The Chair will ask for the management case to be summed up. No new evidence may be included at this stage.
7. The Chair will invite the employee or their representative to sum up
8. Both parties withdraw while the Chair considers the case. Any advisers to the Panel may remain but must not take part in deciding the outcome.
9. If recall is necessary for clarification or further information both parties will be asked to return.
10. Ideally the Chair will reach a prompt decision and will recall both parties to advise the decision or of any delay if unavoidable.
11. The Chair should check the employee's personal file for current warnings before advising the penalty.
12. The outcome of the hearing must be advised to the employee in writing and also their right of appeal.

Procedure at Disciplinary Appeals Committees

- (1) The Chairman will invite the management representative to make an opening statement and present the case including examination of witnesses.
- (2) The appellant or representative will be invited to ask questions of the management representative or witnesses after each has given evidence.
- (3) The Chairman and Members of the Appeal Panel will have the opportunity to put any questions to the management representative.
- (4) The Chairman will invite the appellant or representative to make an opening statement and present the case, including the examination of witnesses.
- (5) The management representative will be invited to ask questions of the appellant or representative or witnesses after each has given evidence.
- (6) Members of the Appeals Panel to have the opportunity of asking any questions of the appellant or representative or witnesses.
- (7) The management representative to be invited to make a closing statement.
- (8) The appellant or representative to be invited to make a closing statement.
- (9) All parties will be asked to retire whilst the Panel reaches a decision.
- (10) Upon the return of both parties the Chairman will convey the decision of the Appeals Committee to both parties and indicate that this will be confirmed in writing within five days.