

ANNEX 1

DISCIPLINARY PROCEDURE

Purpose and Scope

Tonbridge and Malling Borough Council recognises the shared responsibility between managers and staff for maintaining acceptable standards of conduct and behaviour at work. Whilst most day to day issues will be picked up through regular communication and supervision between managers and their staff, and every effort should be made to address issues before recourse to this formal procedure, there are occasions when an individual's conduct or behaviour may need more serious attention.

This procedure provides a fair and structured means of addressing issues relating to behaviour and conduct at work, and instances of alleged bullying and harassment. This Procedure has been based upon the requirements of the Employment Act 2008 and the ACAS Code of Practice.

It applies to all employees. Additional provisions apply to the Chief Executive and Chief Officers as set out in their national conditions of service.

Issues concerning performance should be dealt with using the Capability Procedure and, in most cases, issues concerning lack of attendance will be dealt with under the Sickness Absence Monitoring Policy. Potential redundancy terminations are covered by the Employment Stability Policy.

There may be some situations that would normally be dealt with according to the terms of this Procedure where all interested parties agree to attempt to resolve the issue via third party mediation. If such an intervention is not successful, it will be necessary to revert to this Procedure.

If there are likely to be any difficulties over interpretation or understanding, the Council will take reasonable steps to ensure that such individuals are not disadvantaged during the steps outlined in this Procedure.

Aims

Through the Disciplinary Procedure Tonbridge and Malling Borough Council aims to :

- Assist employees to maintain desired standards of behaviour and conduct
- Support employees to improve and develop their capabilities
- Ensure consistency and fairness of treatment.

Employees entitlements

Employees have a number of rights under this Disciplinary Procedure including:

- not to have disciplinary action taken against them until the case has been fully investigated
- to be told at every stage in the procedure of the nature of the complaint against them
- to be given a minimum of 48 hours notice of the disciplinary interview
- to be accompanied at all meetings by a trade union representative, employee representative or work colleague
- the opportunity to give their side of events
- an entitlement to challenge any sanction by appeal.

Management Standards

Personnel advice should be sought by all managers at all stages of the procedure in advance of any action being taken. Managers and Supervisors may give an informal oral warning as part of the day to day management without recourse to formal disciplinary action.

Only the Chief Executive or a Chief Officer can take the decision to dismiss.

No hearing will take place without a prior, appropriate investigation in consultation with Personnel and, where appropriate Internal Audit.

The same conduct standards apply to all employees including trade union representatives. Any proposed action against a trade union representative should be discussed in advance, with a more senior representative or full time official of the relevant trade union.

Use of Tonbridge & Malling's Disciplinary Procedure will be subject to equalities monitoring. Any data gathered for this purpose will not identify individual employees and will be anonymous.

Investigations

1. Before any disciplinary action is taken, an appropriate investigation must be undertaken. The Personnel & Customer Services Manager or the Personnel and Development Manager will advise on who will conduct the investigation, taking account of all relevant evidence. In most cases of misconduct the investigating officer will be the line manager of the individual being investigated.
2. In complex and serious cases of alleged misconduct or gross misconduct it may be necessary for the required investigation to be conducted by a more senior manager or a manager who is independent of the facts of the case as is necessary. In these cases, advised by either the Personnel & Customer Services Manager or the

Personnel & Development Manager, the Chief Executive or a Chief Officer will nominate the investigating officer/s. The investigation will be advised and supported by Personnel. In exceptional cases (e.g. child protection issues), the Chief Executive or another Chief Officer may decide it is appropriate to nominate a specialist from an external agency/organisation as the investigating officer.

3. Investigations should be completed as quickly as possible.
4. In all cases investigators should be sensitive to diversity issues.

Suspension

1. It may be necessary to suspend an employee whilst an investigation is taking place. This is a neutral act and not a sanction. The decision to suspend must be made by the Chief Executive or a Chief Officer in consultation with Personnel.
2. The period of suspension should ideally last for no more than 5 working days, although this may be extended in cases where the investigative work takes longer, or, if alternative working arrangements are not practicable, may need to go beyond the period of the investigation. The suspension will be confirmed in writing to the employee who will retain the pay they would have received if at work during the period of suspension.

Decisions on findings of investigations

A decision on whether to proceed to a disciplinary hearing will be made in consultation with either the Personnel and Development Manager or the Personnel and Customer Services Manager based upon the findings of the investigation. The decision about whether or not there is a case to answer at a disciplinary hearing will be based upon the “balance of probabilities”. The employee will be notified in writing that there is a disciplinary case to answer and will be given sufficient information about the allegation to enable them to prepare to answer the case at a disciplinary hearing. If there is to be a hearing, the full investigative report should be shared with the employee, unless there is exceptional justification for not doing so. If there is no case to answer, all documentation will be destroyed.

Disciplinary Hearings

No formal disciplinary sanction will be issued until there has been a disciplinary hearing. All disciplinary hearings are held in private and are based on the findings of disciplinary investigations. All evidence presented by management must be pertinent to the case in question, and should have been shared with the employee prior to the hearing.

1. **Arrangements for Hearings.** The Chief Executive or a Chief Officer, with advice from Personnel, will nominate a manager to chair the

formal hearing. In most circumstances this would be the line manager of the officer that conducted the investigation. Where the outcome of the hearing could be dismissal, the Hearing will be chaired by either the Chief Executive or a Chief Officer. The chairman of the Hearing will be supported by either the Personnel & Customer Services Manager or the Personnel & Development Manager. The employee will be provided with notification of the arrangements, along with details of the case to be presented as soon as is possible, and at least 5 working days, in advance of the hearing. The employee should also submit any documentation to the manager conducting the hearing, as soon as possible in advance of the hearing.

2. **Witnesses.** Witnesses should be used where relevant, and should only be present to give evidence, and to be questioned. Details of proposed witnesses should be communicated to either party at least 24 hours in advance of the hearing. In certain circumstances, it may be appropriate for the Management case to rely on witness statements only.
3. **Representation.** The employee has the right to be accompanied by either a trade union representative, employee representative or work colleague.

4. **The Disciplinary Hearing**

The steps outlined below provide a recommended structure for the conduct of a hearing. However, the manager conducting the hearing has the discretion to modify the procedure depending upon the circumstances of the case. For example, in cases where there has been an allegation of sexual harassment, the manager running the hearing may decide that it would not be appropriate for the accused individual to directly question those making the allegations. In such a case the manager might decide to arrange for the witnesses to be in a separate room and would themselves pose any questions that the individual being investigated for the alleged misconduct may wish to make.

It may be necessary for adjournments to take place during disciplinary hearings. Either party may request an adjournment.

Step One – Management presents the case, goes through the evidence that has been gathered, calling witnesses as necessary. Witnesses can be questioned by the employee and/or their representative.

Step Two – The employee will set out his or her case and answer any allegations that have been made. They may call witnesses who would be open to questions by all others present.

Step Three – Both parties will be given the opportunity to sum up. The hearing will then be adjourned for deliberation. If further clarity is required, both parties or witnesses may be recalled.

Step Four – The manager conducting the hearing will need to carefully consider the evidence and will draft their decision in writing before informing both parties. On occasion the decision may not be communicated on the day of the hearing.

Step Five – The manager conducting the meeting will confirm the decision in writing within 5 working days, together with the information on the right to appeal.

Disciplinary Sanctions

All of the formal sanctions outlined below can be issued only following a disciplinary hearing.

Oral Warning – In the case of minor offences the employee will normally be given a formal oral warning. A brief note of the oral warning, the reason for it, the timescale for improvement and the right of appeal will be sent to the employee and they will be advised that this will be kept on file. They will also be advised that this is part of the formal disciplinary procedure and will be told of the likely consequences of further offences. The oral warning will be spent after a period of up to six months, as determined by management, subject to satisfactory conduct and performance.

Written Warning – In the case of more serious offences, or if further offence has been found to have occurred within the life of a previous oral warning, or if there is an accumulation of minor offences, a written warning can be given. This will give details of the complaint, the improvement required and the timescale. It will warn that a final written warning will be considered if there is no satisfactory improvement, and will advise of the right of appeal. A copy of the written warning will be kept by the manager but it will normally be spent for disciplinary purposes after a period of up to 12 months, as determined by management, subject to satisfactory conduct and performance.

Final Written Warning - If the employee has received a previous written warning, any further misconduct or unacceptable behaviour may warrant a final written warning. Also, there may be occasions when misconduct is considered not to be so serious, or behaviour so unacceptable as to justify a dismissal but serious enough to warrant only one written warning which will be considered as both “first and final”. This will give details of the complaint, will warn that dismissal will result if there is no satisfactory improvement and will advise of the right of appeal. A copy of this final warning will be kept by the

manager but it will normally be spent after 12 months (in exceptional cases the period may be longer) subject to satisfactory conduct and behaviour.

Dismissal – If conduct or behaviour is still unsatisfactory and the employee still fails to reach the prescribed standards, dismissal will normally result. Only a Chief Officer or the Chief Executive can take the decision to dismiss. The employee will be provided, as soon as reasonably practicable, with written reasons for dismissal, the date on which employment will terminate and details of their right of appeal.

Gross Misconduct

The following list provides examples of offences which are regarded as gross misconduct, but it must be stressed that this list is not exhaustive.

Theft, fraud, deliberate falsification of records, fighting, assault on another person, deliberate damage to council property, serious incapability through alcohol or being under the influence of illegal drugs, serious negligence which causes unacceptable loss, damage or injury, serious act of insubordination, bullying or harassment, serious acts of unlawful discrimination, serious acts of conduct likely to bring the employer into disrepute (whether inside or outside of working hours), breach of the Council's Code of Conduct, accessing internet sites containing pornographic, offensive or obscene material, breach of the Council's IT Policy, accepting a bribe or gift from a supplier, contractor or other third party in connections with the employee's employment, a serious breach of confidence.

If an employee is accused of an act of gross misconduct, they may be suspended on work on full pay. If, on completion of the investigation and disciplinary hearing, the Chief Officer considering the case is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

The opportunity to Appeal

An appeal may be raised on any number of grounds such as new evidence, undue severity or inconsistency of the penalty. An appeal can be either a review of the disciplinary sanction or a rehearing.

1. An employee who wishes to appeal against a disciplinary decision should inform the Central Service Director in writing within five working days of receipt of the letter informing the employee of the outcome of the disciplinary hearing, giving the grounds as to why they wish to appeal.

2. The manager of the officer who has taken the disciplinary action, supported by either the Personnel & Customer Service Manager or the Personnel & Development Manager will normally hear appeals other than appeals against dismissal, which will be heard by a panel of three elected members of the Authority's Licensing and Appeals Sub-Committee. This Panel will be supported by a representative from Legal Services and either the Personnel & Customer Services Manager or the Personnel & Development Manager.
3. An exchange of all documents of each party's case and a list of witnesses to attend the hearing should take place at least 5 working days before the hearing.
4. **Appeal hearings-** All Appeal Hearings are held in private and are to be based upon and confined to the reasons for the appeal. New evidence used and/or new witnesses may be called to an appeal hearing only if the evidence is relevant to the grounds of the appeal.

Step One – Management presents a chronological sequence of events leading to the original disciplinary hearing.

Step Two – The employee presents their case and calls witnesses. Witnesses can be questioned by the manager conducting the hearing, the manager who presented the disciplinary case, or the members of the Appeal Panel.

Step Three – Management presents its case and witnesses who are open to questions by all others present.

Step Four – Both parties are given the opportunity to sum up.

Step Five – The hearing is adjourned for deliberation. The grounds for appeal, the management case and sanction issued are considered. If further clarity is required, witnesses may be recalled.

Step Six – The chairman conducting the appeal normally communicates the decision to both parties in person, although in some circumstances they may decide to defer the decision. Their decision may be to confirm the original decision, to overturn it or to alter the penalty. In any event, written confirmation will normally be issued within 5 working days.