COWES TOWN COUNCIL
Disciplinary Procedure for Employees

1. Purpose & Scope

This procedure is designed to help and encourage all Town Council employees to achieve and maintain high standards of conduct whilst at work or representing the Town Council. The aim is to ensure consistent and fair treatment for all. This procedure is prepared in accordance with the dismissal and dispute resolution procedures as set out in the Employment Act 2008 and the ACAS Code of Practice APR 2009.

2. Principles

a) No disciplinary action will be taken against an employee until the case has been fully investigated

b) At every stage in the procedure the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made.

c) At all formal stages the employee will have the right to be accompanied by a trade union representative or work colleague during the disciplinary interview.

d) No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty of dismissal without notice or payment in lieu of notice may be applied.

e) An employee will have the right to appeal against any disciplinary penalty imposed.

f) The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

3.1 The Procedure for Misconduct & Gross Misconduct

3.1.1. The following list provides examples of **misconduct** which will normally give rise to formal disciplinary action:

- Unauthorised absence from work
- Persistent short-term and/or frequent absences from work without a medical reason
- Lateness for work or poor time keeping
- Inappropriate standard of dress

- Minor breaches of Health and Safety or other Society rules or procedures
- Failure to perform your job to the standard expected or in line with your job description/objectives
- Time wasting
- Disruptive behaviour
- Misuse of the council's facilities (e.g. telephones, computers, email or the internet)
- Refusal to carry out reasonable requests or instructions
- Smoking in unauthorised areas
- Failure to follow an agreed council Procedure

This list is not exhaustive and offences of a similar nature will result in disciplinary action being instigated.

3.1.2 The following list provides examples of offences which are normally regarded as **gross misconduct:**

- Theft, fraud, deliberate falsification of records, or other acts of dishonesty
- Fighting, assault on another person
- Deliberate damage to property of the council, its workers or members
- Gross incompetence in the conduct of work
- Gross negligence which results in the council or employees being put at risk.
- Being under the influence of illegal drugs or excessive alcohol
- Acts of incitement towards or actual acts of discrimination, harassment or victimisation including on the grounds of sex, race, colour, ethnic origin, disability, sexual orientation, age, religion or belief
- Serious acts of insubordination
- Serious breach of duty to keep information of the council, its service providers and its clients confidential
- Unauthorised entry to computer records
- Serious breach of the Town Council's Dignity at Work – Bullying & Harassment Policy, Equality & Diversity Policy and the Health & Safety Policy.
- Any action, whether committed on or off the premises, that is likely to or does bring the council into disrepute
- Serious negligence which causes or might cause significant loss, damage or injury
- Accepting bribes or incentive payments from suppliers
- Unauthorised use of Council funds or credit

- Working with an external agency to provide information which would be detrimental to and cause commercial risk to the council.

This list is not exhaustive and other offences of a similar gravity will result in disciplinary action being instigated at Gross Misconduct level which carries a potential penalty of dismissal. Gross Misconduct is generally any conduct which places extreme pressure on the mutual trust which exists in an employment relationship.

3.2 Informal Action

Minor misconduct will be dealt with informally usually in a confidential one-to-one meeting between the employee and the Clerk. 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 Finance, Acquisitions & Staffing Committee and involve an informal 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:

3.3 Formal Action

The level of warning you may receive for misconduct/gross misconduct will depend on how serious the council considers the alleged actions to be and your previous conduct in all the circumstances**.** In the event of alleged gross misconduct the formal process may commence at Stage 4 –see 3.4.

3.3.1 Disciplinary Letters

If there is a concern about an employee's conduct or behaviour then a letter will be given to the employee advising him/her of the allegation(s) and reasons why this is unacceptable. The letter should invite the employee to attend a meeting at which the alleged misconduct will be discussed and will inform the employee of their right to be accompanied to the meeting. The letter will specify at which stage the disciplinary procedure is being invoked (see the 4 stages listed) and if invoked at Stage 4 for Gross Misconduct the letter will warn that a potential outcome could be dismissal. The time, date and venue of the meeting will also be advised. Any documents to be produced at the meeting will also be provided.

3.3.2 Disciplinary Meetings

The time and location of a disciplinary meeting should be agreed with the employee and it should be held in a private location with no interruptions. This will normally be without undue delay but allowing the employee to prepare their case e.g. within 5 days of the letter being sent, where practically possible. At the meeting the Clerk (or in the case of the Clerk being disciplined, the Mayor of the Town Council) will state the complaint against the employee and go through the evidence which has been gathered. The employee will also be allowed to ask questions, present evidence and call witnesses if advance notice has been given that they will do so.

If the employee is unable to attend the meeting due to unforeseeable reasons out of their control (e.g. illness) then the Town Council will reasonably rearrange the meeting. However, if the employee fails to attend the meeting without good reason the meeting can be held in the employee's absence.

3.4 Outcomes & Penalties

Stage 1 - Oral Warning

In the instance of a first complaint that conduct does not meet acceptable standards, the employee will normally be given a formal ORAL WARNING. He or she will be advised of:

- the reason for the warning,
- that it is the first stage of the disciplinary procedure,
- the improvement that is required and the timescales for achieving this improvement,
- together with a review date and any support available (where applicable) and
- his or her right of appeal.

A brief note of the oral warning will be kept but it will be spent after 6 months, subject to satisfactory conduct.

Stage 2 - Written Warning

If the offence is a serious one, or if further to previous formal disciplinary action, a WRITTEN WARNING will be given to the employee by the Clerk (or in the case of the Clerk being disciplined, the Mayor of the Town Council). This will give details of the complaint, the improvement required and the timescale. It will warn that action under Stage 3 will be considered if there is no satisfactory improvement and will advise of the right of appeal. A copy of this written warning will be kept on file but it will be disregarded for disciplinary purposes after 12 months, subject to satisfactory conduct.

Stage 3 – Final Written Warning

If there is still a failure to improve and conduct or performance is still unsatisfactory, or the misconduct is sufficiently serious, a FINAL WRITTEN WARNING will normally be given to the employee. 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 written warning will be kept by the Clerk (or in the case of the Clerk being disciplined by the Mayor of the Town Council) but it will be spent after 12 months (in exceptional cases the period may be longer), subject to satisfactory conduct.

Stage 4 – Dismissal or other sanctions

If conduct is still unsatisfactory and the employee still fails to reach the prescribed standards, or where the Town Council reasonably believes Gross Misconduct has occurred, DISMISSAL may result. Only the appropriately convened Finance, Acquisitions & Staffing Committee can recommend to the Town Council to dismiss an employee. The employee will be given a written statement of allegations against him/her, invited to a meeting and then be notified in writing of the reasons for the decision taken at the hearing. Penalties at this stage may include dismissal with notice or summary dismissal (i.e. without any notice), Final Written Warning with/without demotion, loss of pay or loss of seniority. If dismissal is the outcome, the employee will be advised of the date on which employment will terminate. In all cases the employee has a right of appeal.

Very exceptionally, if an offence of Gross Misconduct is extremely serious an employee can be dismissed immediately without a meeting. In this situation a letter setting out reasons for dismissal would be sent to the employee offering the opportunity for an appeal hearing.

3.5 Suspension

If you are accused of an act of gross misconduct, you may be suspended from work on full pay while the Town Council investigates the alleged offence. Only the appropriately convened Committee has the power to suspend. This enables a swift and thorough investigation to occur. Whilst suspended, pending disciplinary investigation, regular contact with a nominated person at the Town Council will be maintained although access to premises, equipment or systems may be denied. The Investigator who compiles evidence for the disciplinary hearing must play no part in the subsequent decision-making to ensure impartiality. Town Councils need to consider the implications of such arrangements on its hearing and appeal panel plans early on in the disciplinary process.

3.6 Appeals

The Appeals stage of the disciplinary process is part of the Code of Practice to which an employee has a right. It can be exercised after any of the stages of disciplinary action for Misconduct/Poor Performance or Gross Misconduct.

An employee who wishes to appeal against a disciplinary decision should inform the Mayor of the Town Council within five working days, in writing and giving reasons for the appeal. An Appeal may be raised if:

- The employee thinks the finding or penalty is unfair
- New evidence has come to light
- The employee thinks that the procedure was not applied properly

Where possible the Appeal will be heard by a separate panel of elected members who have not been involved in the original disciplinary hearing, who will view the evidence with impartiality. The employee will have the right to be accompanied by a colleague or accredited Trade Union official or lay member at the appeal hearing. The outcome of the appeal and reasons for it will be advised to the employee as soon as possible after the meeting and be confirmed in writing.

At the Appeal hearing any disciplinary penalty imposed will be reviewed but it cannot be increased. The decision taken at the Appeal hearing will be final.

3.7 The Right to be Accompanied

At each formal stage of disciplinary interview an employee has the right to be accompanied and can make a reasonable request for such a person to accompany them. An employee can ask any other employee or a trade union representative or an appropriately accredited official employed by a trade union to accompany them, to give support and help them prepare for the disciplinary interview. This right is enshrined in the 1999 Employment Relations Act. As this is an internal process there is no provision to have any external person accompany or represent an employee e.g. partner, parent, solicitor etc. The companion can address the hearing, put and sum up the

employee's case, respond on behalf of the worker to any views expressed at the meeting, confer with the employee. The companion cannot however answer questions on the employee's behalf or address the hearing if the employee does not wish him/her to or prevent the employee explaining their case.

3.8 Hearing Panels

The Town Council will establish hearing panels to hear disciplinary and grievance hearings. In situations where individual members are implicated in the dispute or have undertaken an investigatory role, they will be unable to be panel members.

3.9 Note-taking

It is highly recommended that a note-taker be provided to every meeting/hearing which arises as a result of a disciplinary process as Employment Tribunals are particularly keen to view contemporaneous notes of events which have led to an employment dispute. Town Councils will need to give this requirement careful consideration in order to respect employee confidentiality.

3.10 Grievances Raised During Disciplinaries

In some circumstances when a disciplinary process has commenced an employee chooses to exercise his/her right to raise an internal grievance about the employment relationship with the Town Council or individual Members. It is recommended that in line with ACAS advice, that disciplinary matters are placed on hold until grievances have been aired and actions towards a resolution have been progressed. In exceptional circumstances it is pragmatic to deal with the two disputes concurrently but specialist advice should be sought if this arises.

3.11 Criminal Charges or Convictions

If an employee is charged with or convicted of a criminal offence this does not automatically give rise to a disciplinary situation. Consideration needs to be given to how a charge or conviction may affect an employee's ability to undertake his or her job duties and their relationships with the employer, colleagues, subordinates or customers.

4. Getting it Wrong

Failure to follow the ACAS Code of Practice (available at www.acas.org.uk) can lead to an Employment Tribunal awarding an uplift of an award against the Town Council of up to 25%. Tribunals dealing with unfair dismissal claims are particularly interested in whether the employer followed a procedure and whether the employer acted fairly and reasonably. One way in which to avoid such a penalty is to have an agreed procedure, communicate that procedure to staff and Members, revisit and review the procedure regularly and have some training for those who are expected to operate the procedure.