



NewquayCouncil

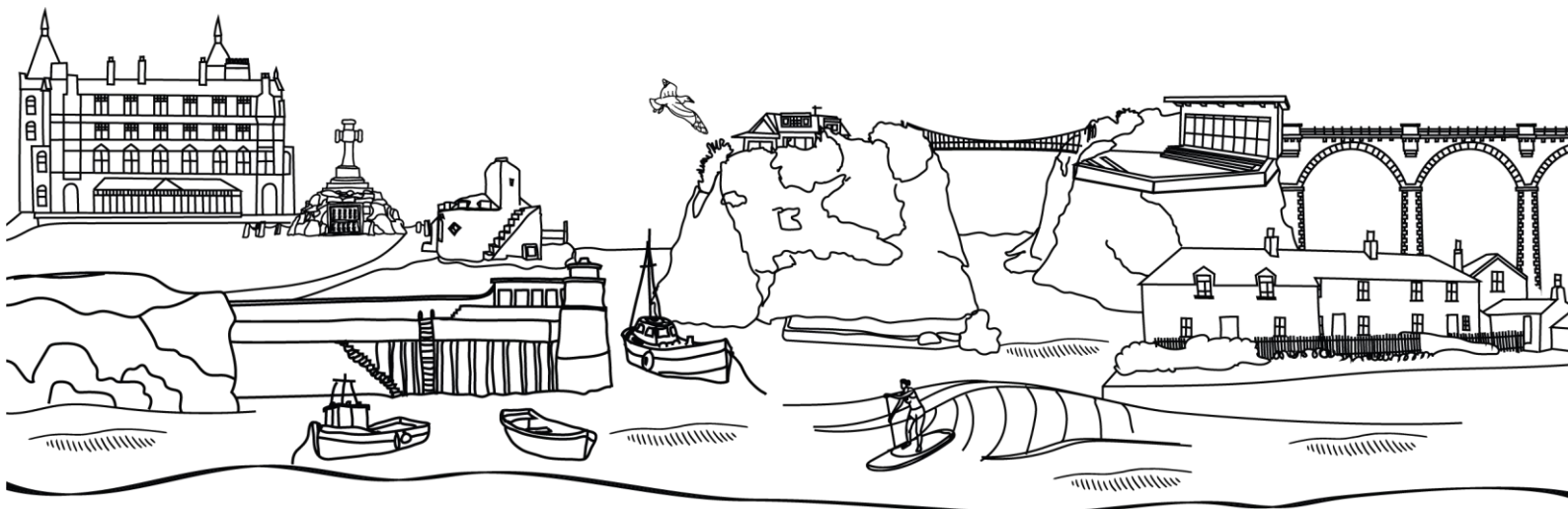
CorporateService

Name of Policy:

Disciplinary Procedure

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This is a Human Resources Policy or Procedure document of Newquay Town Council and as such must be fully adhered to by both councillors and employees.

Policy/Procedure File Status			
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DISCIPLINARY PROCEDURE

1.0 Introduction

This procedure is designed to help and encourage all employees to achieve and maintain acceptable standards of conduct and job performance. The aim is to ensure consistent and fair treatment for the individual. This procedure sets out the framework for resolving issues relating to misconduct and unsatisfactory performance in accordance with the Employment Rights Act 1996, Human Rights Act 1998, and the ACAS Code of Practice on Disciplinary Procedures.

This procedure applies to all employees except where it conflicts with a contractual or statutory requirement, which takes precedence. For employees in probation, please see section 18.0.

2.0 General Principles

The procedure is not a substitute for good management practices and should only be invoked when initial attempts to improve conduct have been made following discussions between the employee and their manager. However, where there has been gross misconduct or a serious breach of disciplinary rules, the formal procedure should be actioned immediately.

No disciplinary action will be taken against an employee until the circumstances have been fully investigated.

The employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case at the appropriate stage.

The employee has the right to be represented at disciplinary hearings and appeals.

In all instances of alleged misconduct, the employee will be given at least 5 working days' notice of the requirement to attend a hearing or appeal. Should the employee fail to attend without an acceptable reason, then the Chair of the hearing or appeal may proceed in the employee's absence.

Any disciplinary action taken will depend on the nature of the offence, the past recorded behaviour of the employee concerned, the consequence to the Council of the offence, and any explanation presented by the employee.

Employees have the right to appeal against any disciplinary warnings and dismissal.

3.0 Roles and Responsibilities

Normally, the Line Manager or the People Manager will consider minor disciplinary issues and resolve them, if they can, without recourse to the formal procedure.

Allegations of more serious misconduct or where a previous warning has been given but the required improvement has not been made should immediately be referred to the People Manager and Chief Executive who will then be responsible for nominating an Investigation Manager. If the misconduct relates to the Chief Executive, this should be referred to the Chair and Vice Chair of Governance and Resources Committee.

The Investigation Manager who carries out an investigation should not participate in any subsequent decision to take action under the procedure. Likewise, the Disciplinary Panel members hearing the case should not be involved in the investigation beforehand. It is important that respective roles are identified at an early stage so that those roles are not compromised. The Investigation Manager need not be the employee's Line Manager, although this would normally be the case.

Only a member of the Senior Management team has the right to suspend an employee, however this must have approval from either the Chief Executive or a Director and the People Manager combined before the suspension takes place.

4.0 Representation

Employees have the right to representation, either by a trade union representative or a work colleague, at the hearing and appeal stages of the formal procedure.

Representatives have the right to address the hearing or appeal. They may also ask questions and present the employee's case. However, they have no right to answer questions on the employee's behalf.

5.0 Informal Procedure

5.1 Informal Advice and Guidance

Where a minor breach of standards of conduct occurs, which does not justify formal disciplinary action, the Line Manager will advise the employee concerned of the conduct and the standard expected in the future. In many cases, this will provide sufficient encouragement for the employee not to commit further acts of misconduct.

The employee will be offered guidance, support, and additional training – where appropriate – to achieve the necessary standards. Representation will not normally be appropriate. Managers should make a note of such informal advice and guidance and should set out in writing the required improvements and standards of conduct that are expected in the future. Records of informal advice/counselling should be kept on employee's personal files.

The formal procedure will apply when:

- Previous informal advice or warnings have proved ineffective;
- The allegation is of a serious nature; or
- A number of minor allegations are made which taken together constitute a serious breach of discipline.

6.0 The Formal Procedure

6.1 Suspension

In some circumstances, the Chief Executive may consider suspension with pay, pending further investigation or until the disciplinary hearing takes place. Suspension may be appropriate where:

- Cases potentially involve gross misconduct;
- Relationships have broken down; or
- There is a risk to the employer's property or to other people.

An employee should be advised that suspension in itself does not constitute disciplinary action.

An employee should be advised of the reasons for suspension. The period of suspension should not normally last for more than 20 working days. However, this period can be extended where necessary.

The decision regarding whether or not suspension is necessary can be reviewed at any time during the disciplinary process.

6.2 Investigation

Before any decision can be made about whether or not a disciplinary hearing is necessary, an investigation must take place. The Chief Executive or People Manager (or the Chair and Vice Chair of Governance and Resources Committee, in relation to matters concerning the Chief Executive) will appoint an appropriate Investigation Manager – who could be an external adviser – who will report back with their findings and make recommendations as to whether a disciplinary hearing should be convened.

The responsibilities of the Investigation Manager are to collect evidence by interviewing any relevant witnesses and gathering all documentation. An investigation meeting will be held with the employee concerned. The purpose of the meeting is to gather the employee's initial response to the allegations and to identify whether any further investigation is needed.

For the benefit of the employee and the Council, any investigation must be concluded within a reasonable timescale. If there is a delay in completing the investigation, it is the responsibility of the Investigation Manager to regularly update the employee or their representatives on the progress of the investigation.

Once the Investigation Manager has gathered all the relevant facts and reviewed the evidence, a report should be drafted to the Chief Executive (or the Chair and Vice Chair of the Governance and Resources Committee as relevant) recommending one of the following:

- Take no further action and inform the employee accordingly;
- Advise the arrangement of counselling, training, extra supervision, or written advice (as appropriate); or
- Arrange a disciplinary hearing.

7.0 Arranging a Hearing

7.1 Who would normally be expected to chair a meeting?

The below table shows who would normally be expected to chair a meeting under this policy:

Employee Grade	Investigation Manager	Disciplinary Manager	Appeal Manager
6 or below	Line manager or People Manager	Senior Manager	CEO
7 – 11	Senior Manager or Director	CEO	Appeal Committee
12 and above	Director	CEO	Appeal Committee

Newquay Town Council reserves the right to depart from the above procedures if the necessary resources are unavailable or if a conflict

of interest arises in the case. Where this occurs the decision-maker will log this in writing and any delegated authority given to a particular officer or panel members, will be made via email for audit purposes.

If, the Investigation Manager concludes that a hearing is required then the necessary arrangements should be made by the Disciplinary Manager. The employee will be given at least 5 working days' notice in writing. The letter should include a clear written statement of the allegation and should enclose any documentary evidence being relied upon and a reminder of the employee's right to be represented.

The Investigation Manager is responsible for presenting the case and making arrangements for any witnesses that the employee relies upon to attend the meeting.

The employee is responsible for arranging any representation they choose to have and any witnesses that they may wish to call. Details of any witnesses the employee intends to call and a copy of all documents that the employee may wish to refer to at the hearing must be submitted to the Investigation Manager at least 3 working days prior to the hearing.

8.0 Conducting a hearing

The Panel for a hearing will normally comprise of the Disciplinary Manager (or the Chair and Vice Chair of the Governance and Resources Committee, in relation to matters concerning the Chief Executive) and an independent HR representative to advise, as appropriate (this can be through email/phone).

The objective is:

- To hear the evidence in respect of the allegation, the employee's response, and to decide whether or not the allegation is substantiated; and
- If the allegation is substantiated, to determine the disciplinary sanction to be applied in light of the seriousness of the offence and having regard to previous relevant disciplinary history.

The procedure to be followed is:

- Introduction of the Panel members and outline of their roles;
- Statement of the purpose of the hearing and the allegation;
- Presentation of the case by the Investigation Manager with witnesses called as necessary;
- Questions by employee or their representative;
- Questions by the Panel;

- Presentation of the case by the employee or their representative with witnesses called as necessary;
- Questions from Investigation Manager;
- Questions from Panel;
- Concluding statement by Investigation Manager;
- Concluding statement by employee or their representative;
- Adjournment of the Panel to make their decision;
- The Panel reconvenes and the employee/representative is informed of the decision and, if necessary, their rights of appeal.

Requests for an adjournment can be made at any stage and it is up to the Disciplinary Manager to decide whether or not a request should be granted.

The outcome of the disciplinary meeting will be confirmed to the employee in writing within 5 working days of the disciplinary meeting. The letter should clearly set out:

- The Panel's decision;
- The length of time that any warning will be active for;
- The expected improvement in conduct;
- Any assistance that will be provided to achieve this; and
- The employee's right to appeal.

9.0 Levels of Disciplinary Action

In determining the appropriate disciplinary action, regard should be given to the employee's previous record, the gravity of the offence, and any explanation given.

Although the procedure implies a sequential approach, there may be certain circumstances where the matter needs to be considered immediately under Stages 2, 3, or 4.

Stage	Outcome	Description
Stage 1	Verbal Warning	For a minor offence, a formal verbal warning (confirmed in writing) making it clear that further misconduct will render the employee liable to further disciplinary action including more severe consequences.
Stage 2	First Written Warning	For a more serious offence or where a previous warning to the employee has not resulted in the required improvement to their conduct.

Stage 3	Final Written Warning	For a sufficiently serious offence, which might warrant only one written warning but is insufficiently serious to justify dismissal, or where previous warnings have been ineffective.
Stage 4	Dismissal with notice	For an act or acts of misconduct, other than gross misconduct, by an employee who is under a written or final written warning. The employee will be liable to dismissal with notice or pay in lieu of notice.
Stage 4	Dismissal without notice	In cases where gross misconduct is established, the employee will be liable to summary dismissal, i.e. without notice or pay in lieu of notice.

All dismissal decisions must be reviewed by an HR Adviser prior to being communicated to the employee.

10.0 Length of Warnings

Records of informal meetings and formal warnings will be kept on employee's personal files. Any verbal warning will be live for 6 months and written warnings for 12 months from the date of the disciplinary hearing. Final written warnings will be live for 2 years.

11.0 The Right of Appeal

An employee has the right to appeal against disciplinary action resulting in a warning or their dismissal. The Chief Executive or Three members of the Appeals Committee will hear the appeal, providing that they have had no previous involvement in the matter, assisted by an independent adviser, if appropriate.

An employee who wishes to appeal must do so in writing to the Chief Executive (or Chair of the Governance and Resources Committee, in relation to matters concerning the Chief Executive). This must be done within 10 working days of the disciplinary hearing informing them of the disciplinary action taken. The appeal letter must set out the grounds for the appeal, normally under one of the following headings:

- The severity of the disciplinary action;
- The findings of the Panel on a point of fact which is pertinent to the decision of the hearing; and
- A failure to adhere to the disciplinary procedure.

12.0 Arranging an Appeal

The date and time of the appeal will be set by the Appeal Manager. It is the responsibility of each side to prepare themselves for the appeal, including arranging for any witnesses to attend.

The Disciplinary Manager and the employee or their representative will, where possible, agree papers for submission to the appeal 5 days prior to the hearing.

13.0 Conducting an Appeal Hearing

The objective is:

- To review the decision of the disciplinary hearing and decide whether that action is warranted or not; and
- If the action is not warranted, to determine what action if any is appropriate;
- In doing so, the Appeal Panel will have regard to seriousness of the offence and any previous relevant disciplinary history.

The procedure to be followed is:

- Presentation of the case by the Disciplinary Manager;
- Questions by the appellant to the Disciplinary Manager;
- Presentation of the appellant's case, including calling any witnesses;
- Questions by the disciplinary manager to the appellant and their witnesses;
- Questions by the Appeals Panel to both parties and their witnesses;
- Concluding statements by the parties. No new information should be introduced at this stage and the appellant should have the opportunity to sum up last;
- Adjournment of the Panel to make their decision;
- The appeal is reconvened if possible and both parties are informed of the decision;
- Written confirmation of the Appeals Panel's decision to the appellant will be sent within 5 working days of the hearing.

The Appeals Panel has the right to call its own witnesses should it consider this to be of assistance in making its decision.

14.0 Trade Union Officials

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.

15.0 Disciplinary Rules

It is difficult to define all the acts of misconduct that might lead to disciplinary action. As a general principle, a test of reasonableness would be applied, i.e. would a reasonable person be aware that disciplinary action would result from a certain act or omission?

The following are examples of the types of conduct that are unacceptable and might lead to disciplinary action. The list is not exhaustive and other behaviour not listed may lead to disciplinary action.

- Poor time-keeping/attendance;
- Unjustifiable absence from work;
- Waste, loss or damage of Council property through failure to take due care;
- Negligence or failure in performance of duty;
- Inappropriate or unauthorised use of e-mail, IT, or telephone facilities; or
- Being under the influence of alcohol or drugs.

16.0 Types of Gross Misconduct

Unacceptable conduct, which may be regarded as gross misconduct, is likely to lead to an employee's summary dismissal. This means dismissal without notice and occurs when the employment relationship between the Council and employee, and the trust which is inherent in that, is irrevocably broken.

The list below gives examples of matters likely to be regarded as gross misconduct and is not exhaustive.

- Refusing to follow reasonable management instructions;
- Theft from the Council, its Members, employees, or the public;
- Physical assault or verbal abuse;
- Fraud or deliberate falsification of records;
- Falsification of qualifications;
- Serious negligence which causes unacceptable loss, injury, or damage;
- Serious acts of insubordination;
- Serious breach of confidence;
- Use of privileged information for personal gain;
- Malicious damage to the Council's property;
- Sexual misconduct at work;
- Discrimination, victimisation, or harassment;
- Serious breaches of safety rules;
- Serious incapability through alcohol or drugs;

- Accessing or distributing pornography on the Council's IT facilities.

17.0 Training

Appropriate training will be given to the Chief Executive or any Members/Managers who might be involved in disciplinary or appeals meetings to ensure that they fulfil their responsibilities under this procedure.

18.0 Disciplinary Action whilst in Probation

Where a member of staff is in their probation period and is the subject of a disciplinary action, then the Chief Executive or Senior Manager handling the matter is not obliged to follow the formal process as set out in this Handbook. They should continue to follow the ACAS code and any advice received from the Council's appointed HR advisors. However, expedited processes can be instigated where deemed appropriate and reasonable and there will not be an automatic right of appeal against any decisions of the panel (including that of dismissal). The Chief Executive should approve any expedited process, should this be considered.



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19.0 Alternative Formats

19.1 Equality Act 2010 – copies of this document in large print (A3 Format) or larger font size can be made available for those with sight impairment on request from the Council Office or by telephoning 01637 878388 or e-mailing the Chief Executive and Chief Executive's Office.

20.0 Freedom of Information

20.1 In accordance with the Freedom of Information Act 2000, this Document will be posted on the Council's Website www.newquay.gov.uk.

Will Mercer
Data Protection and IT Manager
Newquay Town Council
Municipal Offices
Marcus Hill
Newquay
TR7 1AF

Tel 01637 878388
Email: dpo@newquay.gov.uk

