



VENTNOR TOWN COUNCIL

DISCIPLINARY POLICY AND HEARING PROCEDURE, INCLUDING GUIDANCE

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Purpose of the policy

The aim of this policy is to support good conduct and performance. This policy sets out the action which will be taken when disciplinary rules are breached. This could include misconduct and/or poor performance.

(Guidance Notes 1: The purpose of this policy is not designed as a dismissal procedure, but as a means of encouraging staff to meet a good standard).

Principles

If you are subject to disciplinary action, the procedure is designed to establish the facts quickly and to deal consistently with disciplinary issues.

- No disciplinary action will be taken until the matter has been fully investigated.
- At every stage you will be advised of the nature of the complaint, and be given the opportunity to state your case.
- You have the right to be represented or accompanied by an advocate of your choice. This could be a fellow employee or a union representative or professional association rep.
- You will not be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty will normally be dismissal without notice and without pay-in-lieu of notice.
- You have a right to appeal against any disciplinary action taken against you.

(Guidance Notes 2: Employers often lose at employment tribunals because they did not comply with their own procedures – so always follow the procedure.)

Informal discussions

Before taking formal disciplinary action, Ventnor Town Council will make every effort to resolve the matter by informal discussions with you. Only where this fails to bring about the desired improvement will the formal disciplinary procedure be implemented. Ventnor Town Council will follow the ACAS code of practice.

Ventnor Town Council will write to you explaining what it is you are alleged to have done wrong, the reasons why this is not acceptable and where appropriate copies of written evidence will be provided with the letter. Ventnor Town Council will give you reasonable notice of a formal hearing to discuss the issue.

If you are unable to attend the hearing, you must let the most appropriate person know, usually your line manager and the reason(s) as soon as possible. If there is a good reason for your non-attendance, then the hearing will be rearranged. If you fail to attend the hearing, a decision may be made in your absence.

After the hearing Ventnor Town Council will decide whether to take disciplinary action. Depending on the severity of the situation it may be appropriate to go straight to a final written warning. In the event of gross misconduct, Ventnor Town Council may decide to dismiss you. A letter informing you of Ventnor Town Council's decision will be sent to you.

(Guidance Notes 3: Staff must understand the difference between a routine complaint and action taken under this policy.)

First warning

If your conduct or performance is unsatisfactory, you will be given a written warning following a disciplinary interview/hearing. This will set out the improvement required and the timescale over which the improvement is to be achieved. This warning will be recorded but disregarded after **12 months** of satisfactory work. You will be informed that a final written warning may be considered if there is no sustained satisfactory improvement or change. (Where the first offence is serious, for example because it is having a serious harmful effect, Ventnor Town Council may move directly to a final written warning.)

(Guidance Notes 4: It is unfair to keep details of warnings on an employee's file indefinitely. Unless a warning is for a very serious matter, it should be disregarded after, twelve months. The written warning should accurately record the warning given at the disciplinary hearing.)

Final written warning

If the offence is serious, or there is no improvement in standards, or if a further offence of a similar kind occurs, a final written warning will be given. This will include the reason for the warning and a note that if no improvement results, you will be dismissed. This warning will be recorded but disregarded after **18 months** of satisfactory work.

(Guidance Notes 5: The warning should state clearly that dismissal will result from a failure to comply.)

Dismissal procedure

If your conduct or performance continues to be unsatisfactory and the procedure outlined in points one to five has been followed, further investigation may take place and a final disciplinary hearing will be held which may result in dismissal. If you have reached this stage of the disciplinary procedure, you will be warned that this may be a possibility. You will be reminded of your right to bring someone with you to a disciplinary hearing. This is a meeting which can lead to disciplinary action. Taking someone with you is called the right to be accompanied. If dismissal is the outcome, you will be informed of your right to appeal. You will also be informed in writing of the reasons for your dismissal and the date on which your employment will end.

Gross misconduct

If, after investigation, it is confirmed that you have committed an offence of the following nature, the normal consequence will be dismissal without notice or payment-in-lieu of notice:

- theft
- damage to property
- fraud
- incapacity for work due to being under the influence of alcohol or illegal drugs
- physical violence
- bullying and harassment
- gross insubordination.

(Note: the list is not exhaustive)

While the alleged gross misconduct is being investigated, you may be suspended, during which time you will be paid your normal pay rate, but suspension would only occur on rare occasions where it was clearly demonstrated that a staff member's presence would potentially adversely affect an investigation or cause distress to others in their course of the working day. Any decision to dismiss will be taken only after a comprehensive investigation and a disciplinary hearing at which you will be allowed to be accompanied by a colleague or Trade Union representative or Professional Association representative or a mutually agreeable companion.

Appeals

If you wish to appeal against any disciplinary decision you must appeal in writing within five working days of the decision being communicated to you. Someone who was not involved in the original disciplinary action will hear the appeal and decide the case as impartially as possible. Appeals should only be based on potential incorrect processes and procedures having been employed to arrive at the decision or new evidence having come to light.

(Guidance Notes 6: Operating this disciplinary procedure will be complimented if taken in conjunction with guidance from the ACAS Advisory handbook on Discipline and Grievances at work. You can download this at www.acas.org.uk The National Association of Local Councils (NALC), also have very useful guidance and information on dealing with disciplinary cases and further information can be found on their website at www.nalc.gov.uk

Other Terminations

Neither the termination of fixed term contracts nor dismissals for redundancy will follow the disciplinary procedure.

Final Guidance Notes:

Before taking disciplinary action using the procedure, you will need to be certain that:

- the matter cannot be resolved informally.
- you have investigated the matter fully.
- Staff are told that they will be interviewed, and they have the right to be accompanied by a fellow employee, a trade union official or professional association rep of their choice.
 - At the disciplinary hearing, make sure that:
 - the employee concerned knows the details of the allegation.
 - he or she can put across his or her side of the matter.
 - any disciplinary measure is appropriate to the circumstances.
 - If a warning is given, it should tell the employee:
 - the level of improvement required.
 - the date by which it is to be achieved.
 - what will happen if it is not.
 - how to appeal.

Preparing for a disciplinary hearing

1. Prepare your “case”, i.e. the reasons why the employee is being taken to disciplinary hearing.
2. Gather evidence; take statements, get copies of any written evidence such as emails, internal documents, correspondence, text messages.
3. Prepare an agenda for the meeting.
4. Invite the employee in writing to the disciplinary:
 - Give them at least 5 days’ notice, preferably 10 days.
 - Explain the reason/s for the hearing.
 - Enclose/attach copies of the evidence you’ll be referring to.
 - Explain the potential outcome, i.e., that you may take disciplinary action against them, up to and including dismissal (if it’s a serious issue).
5. Allow them to be accompanied at the meeting (by a suitable colleague or qualified Trade Union Representative or Professional Association Representative).

Make sure you have a note taker present and request permission from the employee if you intend to audio record the meeting. Make sure they sign a recording permission form which outlines what they can and cannot do with the recording. (*Reference VTC recording permission form*)

A copy of any notes or recording should be provided to the employee after the disciplinary hearing. It is down to the employer’s discretion if they allow an employee to record a meeting on their phone. If the employee secretly records the hearing, this could be seen as misconduct dependant on circumstances post the meeting.

Conducting a hearing

It's important to consider the hearing as a way of establishing what went on. It shouldn't become a debate, discussion or argument and it's important to be as impartial as possible. The golden rule is innocent until proven otherwise and anyone hearing a disciplinary matter needs to take that view. You are there to put to the employee what you believe to be the issue or the reason for concern over their behaviour without making any judgements. You should speak without being interrupted and if you find that the employee does interrupt, ask them to wait until you've finished speaking.

The employee then can speak without being interrupted so you should fully listen to what they say. You then have the chance to ask any questions you might want to ask them to clarify what they've said, ask them to repeat a particular statement or to explain what they meant by a point they mentioned.

It is difficult at times not to react but it's important to be always professional and if you find yourself getting angry or emotional in any way, consider taking a short break via adjournment. Any disciplinary action taken could be challenged if the person taking the hearing is considered not to be impartial so it's essential to stay as professional as possible and to approach the meeting with an open mind, taking the view that no outcome has been decided until you've heard the employee's side of what happened.

The role of a Trade Union Official or Companions

The employee has the legal right to be accompanied during a disciplinary or appeal hearing. If they do bring someone with them, it's important to understand that person's role. Trade Union Officials or Companions are allowed to address the hearing on the person's behalf (as long as the person wants them to), and can put forward a response to a view expressed during the meeting, but cannot answer questions asked of the employee, or do anything to prevent the employer putting forward their case. They are also allowed to confer with the employee during the hearing and allowed to request adjournments for these reasons or to assist support of the employee if required.

Hearing Agenda

1. Introduce all present
2. If the employee has brought a trade union official or companion to the hearing, explain that the role of the trade union official or companion is:
 1. To put the employee's case; sum up their case; and respond on their behalf to any view expressed at the hearing.
 2. They will also be allowed to confer with the employee during the hearing and request adjournments if needed.
 3. However, they will not be able to answer questions on their behalf.

3. If the employee hasn't brought anyone, ask them if they understood that they could have brought someone with them and ask them to confirm that they've chosen not to.
4. Explain that a recording will be made OR notes will be taken as a record of the meeting and that a copy of the recording or notes will be available to the employee after the meeting.
5. Go through the reasons for the hearing, i.e. Ventnor Town Council via the line manager has concerns about behaviour or issues that have arisen and the hearing is a chance for the Council to put those concerns to the employee and for him/her to have a chance to respond
6. Explain that Ventnor Town Council will first go through their side of the story and the employee can then respond
7. Go through the concerns, referring to evidence/witness statements where relevant
8. Ask the employee for their comments – if necessary, they should comment on each separate piece of evidence
9. Ask any questions of clarification of the employee
10. Summarise what the employee has said
11. Tell the employee that you will not be making a decision today, but that decision will be communicated to them as soon as possible and they will also receive confirmation in writing of the outcome.
12. Close the hearing

Making a decision:

Deciding will very much depend on the issue being dealt with, events of the disciplinary, the time and logistics you have available. It is possible to adjourn the meeting for sufficient time to reasonably consider the information gathered at the disciplinary meeting. Then reconvene the meeting to deliver your decision.

It is normal practice to conclude the disciplinary meeting, have your deliberations and then provide your decision in writing as soon after the hearing as reasonably possible i.e., the next day.

Following up after the hearing

1. After the meeting, prepare a copy of the meeting notes/recording and issue to the employee enclosed with your decision in writing where possible. The employee is entitled to make factual corrections to these notes.
2. Make a decision on the outcome of the meeting, the options are:
 - No action (employee did not understand what was expected of them or there was no case to answer). Usual course of action, if an employee is or was unaware of what is expected of them, is to put in place improved management of the role and offer training or mentoring.
 - **First written warning** – first written warning will expire after a period of 12 months.
 - **Final written warning** (serious offence but not serious enough to warrant dismissal, repeat occurrence of previous offences – final written warning will expire after a period of 18 months)
 - Dismissal or action short of dismissal (contract may be terminated with notice via a settlement agreement or other means)
3. **A warning/s which are already on an employee's record.**

If an employee has a warning on their record it is permitted to add this to your considerations. However, the validity of this warning will depend on the relevance to the current issue:

- Are they the same or completely different issues.
 - Has the behaviour/conduct/performance of the employee been poor, good, excellent since their last disciplinary. If the employee has improved significantly whilst the warning remains on their record, it is reasonable to say the severity of this cumulative warning is diminished by that good behaviour.
 - Is the behaviour/conduct/performance of the employee connected or relevant to the current issue, the disciplinary is shortly after the warning currently on their record and if they have shown little improvement, it is reasonable to say the current warning has a greater cumulative bearing on the outcome of your decision.
 - The amount of time that has passed from a previous warning.
4. **Confirm your decision in writing to the employee.**
 5. **Allow the employee to appeal against your decision if they wish to do so.**

Gross misconduct

After the disciplinary hearing, if it is concluded that the employee is guilty of gross misconduct, the employee would be dismissed without notice. The disciplinary hearing process must be followed before dismissing without notice.

Appeals

Some of reasons for an employee to appeal the final decision are:

1. If the employee feels the sanction is too severe and deemed unfair.
2. There was a defect in previous hearings or the process.
3. There is new evidence that wasn't heard in previous hearings.

If an employee wishes to appeal against a disciplinary decision, he/she needs to put in writing the grounds for their appeal. You should:

1. Hold an appeal hearing meeting.
2. Wherever possible, ask a different Manager to hear the appeal.
3. Make a final decision and communicate that decision to the employee in writing.
4. Confirm that the decision is final, and no further appeals will be heard
5. If a dismissal is turned over by appeal, Ventnor Town Council **MUST** and **WILL** back-pay the employee from date of dismissal to the date they are re-instated.

Continuous service must also be continued.

Reasons to stop the hearing.

There are occasions when it may be appropriate to stop the hearing. If any of the following arise, you should consider stopping proceedings (even if it's to take a short break):

- Employee gets very upset or agitated. Take a short adjournment and ask the employee to go out to compose themselves and come back in when ready, conveyed as sensitively as possible.
- Employee raises a grievance. If an employee raises a grievance during a disciplinary hearing, that will normally take precedence over the disciplinary proceedings. Consider whether to stop the meeting based on the employee's comments, the seriousness of the grievance and whether it will require further investigation.
- Matters come to light which need further investigation. It can happen that an employee raises points you were not aware of, and you need to investigate further. If possible, put the hearing on hold while you verify the information but if it's not possible to verify or investigate straight away, you may need to postpone the hearing pending further investigation.
- It becomes clear that there is no disciplinary case to answer. If that happens, you can bring the hearing to a close and verbally inform the employee that no further action will be taken. This decision needs to be confirmed in writing following verbal confirmation.