

Disciplinary and Capability Procedures

Bramfield and Thorington (B&TPC)

Reviewed and Adopted February 2024

Part A – Disciplinary Procedure

1. INTRODUCTION

2. This disciplinary procedure is designed to help and encourage employees to achieve and maintain acceptable standards of conduct and job performance at all times, including the need to:

2.1. Fulfil the duties specified in their contract of employment.

2.2. Be honest and act beyond suspicion of dishonesty.

2.3. Maintain high standards of integrity and conduct to protect the Council's image and reputation with the public.

3. This policy indicates the disciplinary procedure that will normally be followed in the event of misconduct. The following list provides examples of conduct that will normally be regarded as misconduct leading to disciplinary proceedings. The list is not exhaustive. These are examples only:

3.1. Unsatisfactory time keeping.

3.1.1. Absenteeism, including any absence from work during a working day without prior authorisation or instruction.

3.1.2. Failure to comply with rules and regulations applicable to job requirements.

3.1.3. Failure by an employee to perform the duties and responsibilities of their post to the standard expected by the Council.

3.1.4. Insubordination.

3.1.5. Any other conduct that from time to time is defined by the Council as amounting to misconduct.

3.2. For first instances of minor misconduct the Chair may speak to the employee informally before implementing a formal disciplinary procedure. However there is no obligation for the Chair to do this.

4. SCOPE

The procedure applies to all employees of B&TPC .

5. VERBAL WARNINGS

Verbal Warnings are issued for most first instances of general misconduct, depending on the seriousness of the offence. If the employee is given a Verbal Warning they will be warned of the likely consequences of any further disciplinary offences or a failure to improve their conduct to the satisfaction of the Council. A note confirming the Verbal Warning will be placed on the employee's personnel file and a copy will be provided to the employee. A Verbal

Warning will normally remain in force for 6 months.

The Verbal Warning stage of the procedure may be omitted if the offence is of a sufficiently serious nature.

6. FIRST WRITTEN WARNING

In the case of a serious offence or repetition of an earlier minor offence the employee will normally be given a First Written Warning. A First Written Warning will be issued by the Chair and will set out:

- 6.1. the nature of the offence and the improvement required (if appropriate) and over what period
- 6.2. the likely consequences of any further offence or failure by the employee to improve their conduct to an acceptable standard
- 6.3. that further offences will result in more serious disciplinary action
- 6.4. the employee's right of appeal.

first Written Warning will normally remain in force for 6 months.

The First Written Warning stage of the procedure may be omitted if the offence is of a sufficiently serious nature.

7. FINAL WRITTEN WARNING

If further misconduct occurs within the time period specified in a First Written Warning, or if the misconduct is sufficiently serious the employee will be given a Final Written Warning. A Final Written Warning will be issued by the Chair and will set out:

- 7.1. the nature of the offence and the improvement required (if appropriate) and over what period
- 7.2. the likely consequences of any further offence or a failure by the employee to improve their conduct to an acceptable standard
- 7.3. that further offences will result in more serious disciplinary action up to and including dismissal
- 7.4. the employee's right of appeal.

Final Written Warnings may also be issued in circumstances where the misconduct does not amount to gross misconduct, but is sufficiently serious enough to warrant only one written warning.

A Final Written Warning will normally remain in force for 12 months.

8. STANDARD COUNCIL DISCIPLINARY PROCEDURE

- 8.1. In the case of further misconduct within the time period specified in any Final Written Warning or if the misconduct is sufficiently serious and the Council deems it to be appropriate to contemplate the dismissal or suspension of the employee the following formal disciplinary procedure will be followed.

- 8.2. The Council will investigate the alleged misconduct and will establish the facts surrounding the complaint as necessary, taking into account the statements of any available witnesses.
- 8.3. The Council will set out in writing the alleged conduct or other circumstances which lead the Council to contemplate dismissing the employee or taking disciplinary action against the employee and the basis for the allegation and will send the employee a copy of the statement inviting the employee to attend a disciplinary meeting to discuss the matter. The employee will be provided with a reasonable opportunity to consider their response to the information provided in the statement before attending the meeting. The employee must take all reasonable steps to attend the meeting.
- 8.4. Disciplinary meetings will normally be convened within 10 working days of the Council sending the employee the written statement referred to in 6.3 above. The employee may be accompanied to any disciplinary meeting by an advisor or by a representative of a trade union. The Council will be represented by the Chair
- 8.5. If the time or date proposed for the meeting is inconvenient (either for the employee or for the employee's companion should they wish to be accompanied to the meeting pursuant to 6.4 above) the employee may ask to postpone the meeting by up to 5 working days.
- 8.6. The meeting must be adjourned to allow matters raised during the course of the meeting to be investigated, or to afford the Chair time to consider their decision.
- 8.7. After the meeting the Council will inform the employee of their decision and any applicable sanction within 10 working days. The meeting may be reconvened for this purpose. The decision will be confirmed to the employee in writing.
- 8.8. If the employee wishes to appeal against the decision they must notify the Council in writing within 5 working days of receiving written notice of the decision.
- 8.9. If the employee notifies the Council that they wish to appeal, the employee will be invited to attend a disciplinary appeal meeting before the Council. The Chair of the Council will not form part of appeals if they have personally been involved in earlier stages of the Disciplinary procedure and the Council will nominate another Councillor to take the place of the Chair for the appeal. In these circumstances the appeal meeting will be Chaired by the Vice Chair of the Council. The employee must take all reasonable steps to attend that disciplinary appeal meeting. The employee has the right to be accompanied to a disciplinary appeal meeting by an advisor or by a representative of a trade union.

A disciplinary appeal meeting will normally be convened within 10 working days of the Council receiving notification that the employee wishes to appeal pursuant to 6.8 above. If the meeting date is inconvenient for the employee or the employee's companion they may ask to postpone the meeting by up to 5 working days.

Any new evidence that the employee wishes to put forward will be considered, as will any new evidence from the Council. The original disciplinary penalty will be reviewed.

The disciplinary appeal sanction originally imposed cannot be increased upon appeal.

The disciplinary appeal meeting will not necessarily take place before any disciplinary sanction imposed by the Council takes effect. If the employee's appeal is against dismissal and the appeal is successful the employee will be reinstated and continuity of employment will be preserved.

The meeting must be adjourned to allow matters raised during the course of the meeting to be investigated, or to the Council time to consider its decision.

After the disciplinary appeal meeting the Council will inform the employee of its final decision within 10 working days. The meeting may be reconvened for this purpose. The decision will be confirmed to the employee in writing.

9. COUNCIL DISMISSAL PROCEDURE FOR USE IN GROSS MISCONDUCT

The following list provides examples of conduct that will normally be regarded by the Council as Gross Misconduct. This list is not exhaustive. These are examples only:

- 9.1. Refusal or repeated failure by an employee to carry out their duties.
- 9.2. Falsification of documents or information (including expense claims).
- 9.3. Unauthorised disclosure of confidential information.
- 9.4. Assaulting a fellow employee or any other person whilst acting or purporting to act on behalf of the Council.
- 9.5. Insulting, indecent or offensive behaviour towards a fellow employee or any other person whilst acting or purporting to act on behalf of the Council.
- 9.6. Serious or repeated harassment (including sexual and racial harassment).
- 9.7. Incapacity at work due to the influence of alcohol, unprescribed drugs or any other substance.
- 9.8. Wilful damage to Council property.
- 9.9. Theft, unauthorised use or possession of Council property or theft of the property of a fellow employee.
- 9.10. Conduct bringing the Council into disrepute.
- 9.11. Any other conduct that from time to time is defined by the Council as amounting to gross misconduct.

If an employee is accused of any gross misconduct they may be suspended from work on full pay pending the outcome of an investigation into the alleged offence(s). Such a period of suspension will not normally exceed 15 working days unless there are exceptional circumstances.

The Council will investigate the matter and will establish the facts surrounding the complaint as necessary, taking into account the statements of any available witnesses. As part of that investigation the employee will be interviewed.

If the Council believes the employee is guilty of gross misconduct their employment will be terminated summarily without notice or pay in lieu of notice.

The Council will send the employee a statement, setting out the allegations of misconduct that led to the employee's dismissal and the Council's basis for thinking that the employee is guilty of that misconduct. The date on which the employment terminated will be confirmed to the employee and the employee may be reminded of any continuing obligations they may have following the termination of employment. This statement will also explain the employee's right to appeal

against the Council's decision.

If the employee wishes to appeal against the Council's decision they must notify the Council in writing within 5 working days of receiving notice of the Council's decision pursuant to 7.5 above.

If the employee appeals the Council will invite the employee to attend a disciplinary appeal meeting before the Council. The Chair of the Council will not form part of the appeals if they have personally been involved in earlier stages of the Disciplinary procedure and the Council will nominate another Councillor to take the place of the Chair for the appeal. In these circumstances the appeal meeting will be Chaired by the Vice Chair of the Council. The employee must take all reasonable steps to attend the meeting. The employee has the right to be accompanied to a disciplinary appeal meeting by an advisor or by a representative of a trade union.

Any disciplinary appeal meeting will normally be convened within 10 working days of the Council receiving notice from the employee that they wish to appeal pursuant to 7.6 above. If the date of the meeting is inconvenient for the employee or their companion the employee may ask to postpone the meeting by up to 5 working days.

1. Any new evidence that the employee wishes to put forward will be considered as will any new evidence from the Council. The original disciplinary penalty will be reviewed.
2. The disciplinary sanction originally imposed cannot be increased upon appeal.
3. The disciplinary appeal meeting will not necessarily take place before any disciplinary sanction imposed by the Council takes affect. If the employee's appeal is against dismissal and the appeal is successful they will be reinstated and continuity of employment will be preserved.
4. The meeting must be adjourned to allow matters raised during the course of the meeting to be investigated, or to afford the Council time to consider its decision.

After the disciplinary appeal meeting the employee will be informed of the Council's final decision within 10 working days. The meeting may be reconvened for this purpose. The Council's decision will be confirmed to the employee in writing.

Part B – Capability Procedure

The primary aim of this procedure is to provide a framework within which B&TPC can work with employees to maintain satisfactory performance standards and encourage improved performance where necessary. B&TPC recognises the difference between a deliberate or careless failure on the part of the employee, to perform to the standards of which they are capable (in which case B&TPC will use the Disciplinary Procedure) and a case of incapability, where the employee is lacking knowledge, skill or ability and so cannot perform to the standard required (in which case B&TPC will use this capability procedure in an attempt to improve the employee's performance).

B&TPC also recognises that during an employee's employment, capability to carry out their duties may deteriorate. This can be for a number of reasons; the most common ones being that either the job changes over a period of time and the employee fails to keep pace with the changes or the employee changes and can no longer cope with the work. The capability procedure is entirely non-contractual and does not form part of an employee's contract of employment.

Minor capability issues will be dealt with informally through counselling and training. Informal discussions may be held with a view to clarifying the required work standards and the level of performance expected of the employee, identifying areas of concern, establish the likely causes of poor performance, identifying any training or supervision needs, setting targets for improvement and agreeing a time-scale for review. However, in cases where informal discussion with the employee does not lead to a satisfactory improvement in performance, or where the performance issues are more serious, the following capability procedure will be used. At all stages of the procedure an investigation will be carried out.

At all stages B&TPC will give consideration as to whether unsatisfactory performance is related to a disability and if so, whether there are any reasonable adjustments that could be made to the requirements of the employee's job or other aspects of the working arrangements.

B&TPC will notify the employee in writing of the concerns regarding performance and will invite the employee to a performance review meeting to discuss the matter. B&TPC will provide sufficient information about the poor performance and its possible consequences to enable the employee to prepare to answer the case. This will include the provision of copies of written evidence where appropriate.

Having given the employee reasonable time to prepare their case, a formal capability meeting will then take place, conducted by the Chair, at which the employee will be given the chance to state their case, accompanied if requested, by a trade union official or fellow employee of their choice. The employee must make every effort to attend the meeting.

The purposes of a performance review meeting include:

- to set out the required standards that B&TPC considers the employee has not met
- to establish the likely cause of poor performance (including reasons why measures taken so

far have not led to the required improvement) and to allow the employee the opportunity to explain the poor performance and to ask any relevant questions.

Except in the case where dismissal is proposed, the purposes of the performance review meeting also include:

- to discuss measures such as additional training or supervision, which may improve the employee's performance
- to set targets for improvement
- to set a reasonable timescale for review (reflecting the circumstances of the case)

In a case where dismissal is proposed, the purpose of a performance review meeting also include:

- to establish whether there are any further steps that could reasonably be taken to rectify the employee's poor performance
- to establish whether there is a reasonable likelihood of the required standards of performance being met within a reasonable timescale, and
- to discuss whether there is any practical alternative to dismissal.

Following the performance review meeting B&TPC will decide whether or not formal performance action is justified and if so, the employee will be informed in writing of B&TPC's decision in accordance with the stages set out below and notified of their right to appeal against that decision.

Stage 1 – Performance Warning

The employee will be given a formal Performance Warning. This will set out the areas in which the employee has not met the required performance standards, targets for improvement and any measures such as additional training or supervision, which will be taken with a view to improving the employee's performance, a timescale for review and the likely consequences of failing to improve to the required standards within the review period. The performance warning will be recorded but nullified after 6 months, subject to a satisfactory performance.

The employee's performance will be monitored and at the end of the review period, B&TPC will write to the employee to advise him or her of the next step. If B&TPC is satisfied with the employee's performance, no further action will be taken. If B&TPC is not satisfied with the employee's performance, the matter may be progressed to Stage 2 or if B&TPC feels that there has been a substantial but insufficient improvement, the review period may be extended.

Stage 2 – Final Performance Warning

Failure to improve performance in response to the procedure so far, the first instance of serious poor performance will result in a Final Performance Warning being issued. This will set out the areas in which the employee has still not met the required performance standards, targets for improvement, any further measures such as additional training or supervision, which will be taken with a view to improving the employee's performance, a further timescale for review and the likely consequences of failing to improve to the required standard within the further review period, i.e. that dismissal will probably result. The final performance warning will be recorded but nullified after 12 months, subject to satisfactory performance.

The employee's performance will again be monitored and at the end of the further review period B&TPC will write to the employee to advise the next step. If B&TPC is satisfied with the employee's performance, no further action will be taken. If B&TPC is not satisfied with the employee's performance, the matter may be progressed to Stage 3 or the review period may be extended.

Stage 3 – Dismissal

Failure to improve performance in response to the procedure so far will normally lead to dismissal, with appropriate notice. A dismissal decision will only be made after the fullest investigation possible has been carried out. Dismissal can be authorised only by the Chair of the Council. The employee will be informed of the reasons for dismissal, and the appropriate period of notice, the date on which their employment will terminate and how the employee can appeal against the dismissal decision.

Appeals

An employee may appeal against any decision under this capability procedure, including dismissal, to the Chair. Appeals should be made in writing and state the grounds for appeal. The employee will be invited to attend an appeal meeting

At the appeal meeting, the employee will be given the chance to state their case and will have the right to be accompanied by a trade union official or a fellow employee of their choice.

Following the meeting, the employee will be informed in writing of the appeal decision.

B&TPC's decision on the appeal will be final