



# OAKHAM TOWN COUNCIL

## DISCIPLINARY PROCEDURES

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## **DISCIPLINARY PROCEDURE – (TOWN CLERK)**

### **1. PURPOSE AND SCOPE**

- 1.1 The procedure set out below applies to the Town Clerk, or anyone designated by the Council to act in that position and is for use in cases relating to discipline and capability. It specifies the Council's aim to encourage and maintain improvement in individual conduct and performance and is designed to assist the achievement and maintenance of proper standards in representing the Council in all respects.

### **2. PRINCIPLES**

- 2.1 The principles of natural justice and good management practice will govern the conduct of any proceedings against the Town Clerk on the grounds of either alleged misconduct (i.e. discipline) or alleged inability to undertake the role of Town Clerk (i.e. capability).
- 2.2 The Council will provide the training and resources necessary to help the Town Clerk perform to the required standard.
- 2.3 There will be fair, consistent and prompt treatment of the Town Clerk who becomes liable for disciplinary action. Reviews will be conducted with sensitivity and objectivity with the view of helping to improve conduct and performance.
- 2.4 The procedure is designed to establish the facts promptly and to deal consistently with disciplinary issues. Disciplinary action will not be taken until the matter has been investigated.
- 2.5 At every stage the Town Clerk will be advised of the nature of the complaint and given the opportunity to state his/her case.
- 2.6 At all formal stages of the procedure the Town Clerk may be accompanied by a fellow employee, friend or trade union representative of his/her choice.
- 2.7 The Town Clerk will not be dismissed for a first offence except in the case of gross misconduct, where the penalty will normally be dismissal without notice and without pay in lieu of notice.
- 2.8 The Town Clerk will have the right of appeal against any formal disciplinary action taken.
- 2.9 The procedure may be implemented at any stage if the alleged misconduct warrants such action.

### **3. INFORMAL DISCUSSIONS/COUNSELLING**

- 3.1 Before taking formal disciplinary action, every effort will be made to resolve the matter by informal discussions. Only where this fails to bring about the desired improvement will the formal procedure be implemented, unless the offence is considered so serious that the formal procedure needs to be invoked. If thought appropriate, counselling by an independent person may be considered.
- 3.2 Where insufficient or no satisfactory progress is established or where the offence/performance has been raised with the Town Clerk on previous occasion(s), an informal warning will be given.

#### **4. PRELIMINARY INVESTIGATION**

- 4.1 Where a question of discipline or capability exists that could not be resolved informally, through an informal warning, a preliminary investigation will be undertaken to determine whether there is a case to answer.
- 4.2 An Investigating Panel will be constituted and appointed by the Chairman of the Council to include no fewer than three elected Members. The Panel should not comprise any member with a direct personal involvement in the complaint. The Panel may wish to co-opt the services of an external adviser to assist with their deliberations or appoint an external adviser to undertake the investigation on their behalf.
- 4.3 Once the preliminary investigation has commenced, the Town Clerk should be notified in writing of the allegations that are being investigated and given the opportunity to make representations on them to the Investigating Panel/external investigator. There is no statutory right for the Town Clerk to be accompanied at a formal investigation.
- 4.4 The role of the Investigating Panel/external adviser is to conduct a careful investigation into the allegations in order to decide if there is a case for a disciplinary hearing to consider further. If after investigation, it is considered that there is a case to answer the Investigating Panel will draw up the charges the disciplinary hearing will consider. Should the Investigating Panel conclude that there is no case to answer the Town Clerk should be notified in writing and the allegation withdrawn.

#### **5. SUSPENSION**

- 5.1 Where the Town Clerk's continuing presence at work compromises the investigation or impairs the efficient exercise of the Council's functions, the Town Clerk may be suspended from duty. The Chairman, or appropriate committee, acting under delegated powers, may carry out such suspension on full pay, pending further investigation or a disciplinary hearing. Written notice stating the reasons for such suspension shall be given to the Town Clerk at the earliest possible opportunity. If suspended the Town Clerk will receive full pay but must be readily available to attend any investigatory or disciplinary hearing as required. Suspension is not disciplinary action and does not involve any prejudgement of guilt.
- 5.2 The necessity for the Town Clerk to remain suspended should be reviewed at regular intervals and where possible lengthy periods of suspension should be avoided.

#### **6. THE DISCIPLINARY HEARING**

- 6.1 Where the Investigating Panel decides that there is a case to answer and refers the matter to a disciplinary hearing, a Disciplinary Committee will be established.
- 6.2 The Disciplinary Committee should comprise of no fewer than three elected Members. Where practicable, the Disciplinary Committee should not include anyone with a direct involvement in the case or has participated at an earlier stage of the proceedings.
- 6.3 The Town Clerk will be informed of the requirement to attend the hearing and the arrangements confirmed in writing giving notice of the hearing that will be held without unreasonable delay. Before the meeting the Town Clerk has the right, if so requested, within a reasonable time to, (i) receive further details of the complaint made and/or (ii) a postponement of the meeting for a period not exceeding 5 working days. The Town Clerk may circulate a written statement to the Members comprising the Investigating Committee.

6.4 The Town Clerk will receive a letter giving the following;

- 1) The details of the alleged offence,
- 2) A summary of the investigation, if applicable,
- 3) The names of the Members conducting the hearing,
- 4) The names of any witnesses,
- 5) Copies of any documentary evidence to be presented at the hearing, and
- 6) The right to be accompanied.

6.5 The Town Clerk will be required to supply to the Disciplinary Committee conducting the hearing,

- 1) The name of the companion/representative,
- 2) The names of any witnesses it is intended to call, and
- 3) Copies of any documentary evidence that he/she intends to present at the hearing.

This information should be supplied at least two clear working days prior to the date of the hearing.

6.6 The procedure to be adopted at the hearing is outlined at the Appendix.

## **7. DISCIPLINARY ACTION**

7.1 Following the disciplinary hearing, the Disciplinary Committee may decide on one of the following courses of action.

- 1) Exonerate the Town Clerk;
- 2) Issue a written warning;
- 3) Issue a final written warning;
- 4) Issue an invitation to resign or accept early retirement;
- 5) Dismissal with notice
- 6) Summary dismissal without notice.

7.2 The Town Clerk will be notified of the Disciplinary Committee's decision, in writing, within 5 working days together with the right of appeal against any formal action. A copy of a formal warning will be placed on the Town Clerk's file where it will remain valid, subject to satisfactory conduct and performance, for: -

- a. Written warning – 12 months; and
- b. Final written warning –18 months.

7.3 The letter notifying the Disciplinary Committee's decision will detail;

- a. The level of improvement required;
- b. The date by which it is to be achieved;
- c. What will happen if the level of improvement is not achieved; and
- d. How the Town Clerk can appeal against the decision.

## **8 APPEAL PROCESS**

8.1 If the Town Clerk wishes to appeal against the Disciplinary Committee's decision he/she must do so, in writing, to the Chairman of the Council within 10 working days of receipt of the disciplinary decision. A written statement of case should be provided by the Town Clerk within a further 5 working days.

8.2 The Town Clerk will be allowed to appeal to another committee, with delegated powers, established to hear the appeal. The Appeal Hearing will follow the process detailed in the Appendix.

## **9 GROSS MISCONDUCT**

9.1 If, after investigation, it is deemed that the Town Clerk has committed a serious offence the normal consequence will be dismissal. Some acts are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. The following is a list of acts that the Council may consider as gross misconduct, dependent upon the circumstances, but it is not exclusive or exhaustive and is given as an example.

- Theft, fraud, deliberate falsification of Council documents.
- Fighting, assault on another person.
- Deliberate damage to Council property.
- Harassment, bullying and victimisation.
- Being unfit for work through alcohol or illegal drugs.
- Gross negligence.
- Gross insubordination.

9.2 Any decision to dismiss will only be taken after a full investigation. If the Town Clerk is found to have committed an act of gross misconduct, he/she will be dismissed without notice or pay in lieu of notice.

## **10 CAPABILITY**

10.1 Paragraphs 4 to 8 of this procedure shall apply also to any question or complaint as to the capability of the Town Clerk to fulfil the duties and responsibilities of the post. This will include any alleged failure by the Town Clerk to establish and maintain a satisfactory working relationship with the Council.

10.2 The procedure for capability may need adaptation where medical fitness is in question. A further medical opinion should be obtained if the opinion of the Council's medical adviser and that of the Town Clerk differ.

10.3 If the Investigating Panel undertaking the preliminary investigation concludes that there is a question of substance as to the capability of the Town Clerk, they should advise him/her informally of the nature of that question. There should be a full discussion covering:

- 1) The reason for the incapability;
- 2) Problem areas;
- 3) What needs to be done to improve performance, including any opportunities for training/retraining the Town Clerk;
- 4) The time frame over which the improvements should be shown; (unless there has been a previous warning or there is evidence of serious incapability which is not likely to be remedied within a reasonable time). Any time period should be sufficient to allow a reasonable opportunity for the Town Clerk to show either an improved performance or that the conclusion of the preliminary investigation was mistaken;
- 5) When it is felt that there is no prospect of improving the Town Clerk's performance a satisfactory outcome may be achieved by the Clerk resigning or accepting early retirement.

10.4 At capability hearings where the parties disagree on technical or professional matters it may be useful to refer to an appropriately qualified independent third party.

10.5 Suspension is not normally appropriate in cases of capability except where the Town Clerk's continued presence at work might compromise the effective exercise of the Council's functions.

## **11 EMPLOYMENT TRIBUNAL**

11.1 The Town Clerk will normally be expected to have exhausted all internal appeals before making a claim to an outside body. However, in the case of a complaint to an Employment Tribunal it is recognised that, because of the three month time limit to register a claim, an originating complaint may have to be registered whilst the internal procedure is still operating. In such a case the Town Clerk is advised to register the case with the Tribunal and request it to delay the hearing subject to the outcome of the internal appeal.

## **12 REVIEW**

12.1 This procedure will be subject to periodic review.

## **DISCIPLINARY/APPEAL HEARING – ORDER OF PROCEEDINGS**

The following is an outline of the order of proceedings for conducting a disciplinary hearing or an appeal against a disciplinary decision for the Town Clerk to ensure that the process is conducted in a fair and equitable way.

### Council's Case

1. The Council's case against the Town Clerk will be put by a person appointed by the Council and may call witnesses.
2. The Town Clerk and/or companion/representative may ask questions of the person appointed (as in paragraph 1) and any Council witnesses.
3. The Member Panel hearing the case and any advisers may ask questions of the person presenting the Council's case and any witnesses.

### Town Clerk's Case

1. The Town Clerk and/or companion/representative will put the case and may call witnesses.
2. The person presenting the Council case may ask questions of the Town Clerk and any witnesses.
3. The Member Panel hearing the case and any advisers may ask questions of the Town Clerk and any witnesses. They may also ask any final questions on issues which may have emerged during the hearing.

Note: The companion/representative will be allowed to address the hearing to put and sum up the Town Clerk's case, respond on behalf of the Clerk to any views expressed at the meeting and confer with the Clerk during the hearing. The companion/representative does not, however, have the right to answer questions on the Town Clerk's behalf, address the hearing if the Clerk does not wish it or prevent the Clerk from explaining his/her case.

### Summing Up

1. The person presenting the Council's case will sum up first, followed by the Town Clerk and/or companion/representative. No new evidence to be introduced.

### Adjournment

1. Both parties to withdraw to enable the Member Panel hearing the case to consider the case and come to a decision.
2. If it is necessary to recall either party to clarify certain points, both parties are to return.
3. The decision will then be confirmed to both parties, preferably verbally at the same time.

### Note

Witnesses will only attend for that part of the hearing where they give evidence and respond.