

Buckland Parish Council

Disciplinary and Grievance Procedure

A. Disciplinary Procedure

1. Purpose and Scope

This procedure is designed to help and encourage all council employees to achieve and maintain high standards of conduct whilst at work or representing the 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

- (i) No disciplinary action will be taken against an employee until the case has been fully investigated
- (ii) 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.
- (iii) 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.
- (iv) 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.
- (v) An employee will have the right to appeal against any disciplinary penalty imposed.
- (vi) The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

3. Definition of Gross Misconduct

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.
- 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 breach of duty to keep information of the council, its service providers and its clients confidential
- Serious breach of the council's Security Policy, Health & Safety Policy, Confidentiality or e-mail and Internet Policy
- Serious negligence which causes or might causes significant loss, damage or injury
- Accepting bribes or incentive payments from suppliers
- Unauthorised use of funds or credit

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.

4. Informal Action

Minor misconduct will be dealt with informally usually in a confidential one-to-one meeting between the employee and line manager. In the case of the Clerk being the individual against whom there is a complaint or allegation the matter should be handled discreetly by the Chairman or, if more appropriate, the Vice Chairman and involve an informal meeting initially. However, where the matter is more serious or informal action has not brought about the necessary improvement the formal procedure in section 5 will be used.

5. Formal procedure

The level of warning you may receive for misconduct will depend on how serious the council considers the alleged actions to be and your previous conduct. In the event of alleged gross misconduct the formal process may commence at Stage 4 see 5 (iii) below.

In cases when the employee is the Clerk references to the manager shall be taken to mean the Chairman, or, if more appropriate the Vice Chairman.

(i) 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 4 stages below) 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.

(ii) 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 manager 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 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.

(iii) Outcomes and 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 Manager. 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 Manager 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 Council reasonably believes Gross Misconduct has occurred, *Dismissal* may result. Only an appropriately convened hearing panel can take the decision 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) or Final Written Warning with/without loss of pay. 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.

(iv) Suspension

If you are accused of an act of gross misconduct, you may be suspended from work on full pay while the council investigates the alleged offence. Only an appropriately convened hearing panel shall have 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 council will be maintained although access to 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. Councils need to consider the implications of such arrangements on its hearing and appeal panel plans early in the disciplinary process.

(v) 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 Chairman 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.

(vi) 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.

(vii) 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 council or individual Members. The SLCC recommends, 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 SLCC would advise caution and specialist advice should be sought if this arises.

(viii) 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. Councils will need to give this requirement careful consideration in order to respect employee confidentiality.

(ix) 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.

B. Grievance Procedure

1. Purpose and Scope

It is the policy of the council to give employees the opportunity to air and seek redress for any individual employment grievance which they may have. Grievances may be any concerns, problems or complaints employees wish to raise with the council.

The procedure set out below aims to facilitate a speedy, fair and consistent solution to an individual employee's employment grievance. This procedure is produced in line with the ACAS Code of Practice 2009 as set out in the Employment Act 2008.

2. Principles

- (i) At every stage in the procedure the employee will be given the opportunity to state his or her case before any decision is made.
- (ii) Grievances will be dealt with promptly and consistently.
- (iii) At all formal stages the employee will have the right to be accompanied by a work colleague or trade union representative during the Grievance Hearing.

- (iv) An employee will have the right to appeal against any outcome of a Grievance Hearing.
- (v) At no time will an employee be penalised or victimised for having raised a Grievance against the council.

3. Informal Action

Wherever possible, any grievance should be raised informally with the employee's line manager, or if this is inappropriate with the next level of management. In the case of the Clerk to the council raising a grievance this should be directed to the Chairman of Council unless the complaint is about the Chairman in which case the Vice Chairman (or other Member) can be identified to handle the Clerk's concerns. The person hearing the grievance is subsequently referred to as the "Hearing Manager". The recipient of the grievance from a clerk should be treated with discretion and confidentiality at all times.

4. Formal Action

(i) Written Statement

If the employee does not consider it appropriate to raise the grievance informally, or if requested by the person the employee spoke to informally, then the employee should submit a formal grievance in writing to their line manager, or if this is inappropriate to the Chairman of Council.

(ii) Meeting or Hearing

Generally, within a reasonable period of time e.g. five working days of receipt of a written complaint, the Hearing Manager will arrange a meeting with the employee. The Hearing Manager will investigate the substance of the complaint and hear submissions from the employee concerned together with such other submissions or evidence as he shall consider appropriate and take such steps as he shall consider necessary to resolve the issue raised. It may be necessary to adjourn the meeting in order for an investigation to take place. Careful consideration of the evidence and the necessary steps required to resolve the problems will be given to the grievance. The employee may call witnesses by prior arrangement with the Hearing Manager. There is no right for a Member or employee implicated in an employee's grievance to cross examine the aggrieved during a grievance hearing but the Hearing Manager may wish to make his own investigations through interviewing these individuals and/or other witnesses separately. The Hearing Manager may ask the employee what he or she would like to happen as a result of raising the grievance and bear this in mind when preparing the response.

(iii) Response

The Hearing Manager will advise the decision to the employee in writing and, where appropriate, include an action plan to assist in the resolution of the problem. Councils which handle internal disputes effectively generally consider the options and costs in a timely fashion, then agree and publicise the workable solutions, monitor, review and learn from the experience. There may be some value in exploring Mediation as a way in which to resolve differences between two parties and the Hearing Manager has the option to consult SALC for advice and support.

(iv) Appeal

If the employee is dissatisfied with the decision of the Hearing Manager on his complaint, he may appeal against the decision to the Chairman or other elected Member by written notice within five working days of the decision.

An Appeal may be raised if:

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

On receipt of the appeal an alternate Member shall arrange to meet and consult with the employee, the line manager or Members concerned and any other persons, as he shall consider appropriate without unreasonable delay. The Appeal Hearing Manager shall consider the issues and shall then take all such steps, as he may consider necessary to resolve those issues.

Where the council's Chairman has acted as Hearing Manager in the initial grievance meeting the Vice Chair or another Member will hear the appeal as Hearing Manager and the decision of the Appeal Hearing will be final. The council will need to ensure that the Members involved in the hearings are able to act impartially and reasonably at all times. The outcome of the appeal should be conveyed to the employee in writing in a timely manner.

(v) Bullying or Harassment

If a grievance concerns alleged bullying or harassment the matter should be reported promptly to the employee's Line Manager, or another manager/Member if more appropriate, with an indication of the required action.

The complaint will then be investigated and any action taken and any resolution achieved will be reported back. If the solution is not satisfactory to the complainant, the matter will be discussed further and, if appropriate, an alternative solution agreed. The decision at this stage will generally conclude the enquiry.

If a further appeal or review is available the employee will be notified. As a result of an investigation into a claim of harassment disciplinary action may be instigated against any alleged perpetrators of the action or in the case of alleged perpetrators being elected Members a Code of Conduct complaint lodged by the council through the Standards process.

(vi) Right to be Accompanied

At any formal stage of the procedure an employee may be accompanied by a fellow employee of their choice or their trade union representative or official of a trade union (appropriately accredited) but as this is an internal procedure they will not be entitled to be accompanied by any external supporter e.g. partner, parent, solicitor etc. This right to be accompanied is enshrined in the Employment Relations Act 1999. To exercise this right the employee should make a reasonable request. The companion will be allowed to address the hearing, put and sum up the employee's case, respond to views expressed at the hearing and to confer with the employee during the hearing (sometimes in an adjournment) but is not allowed to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case.

(vii) Confidentiality

So far as is reasonably practicable, the council will keep any grievance or complaint of harassment confidential between the manager or Member investigating the grievance or complaint, the employee and the person about whom the grievance or complaint is made. If it is necessary to investigate the matter with any other employee or person, the employee will be so advised.

(viii) Record Keeping

In all cases, written records of the nature of the grievance raised, the employer's response, action taken (with reasons), details of any appeal and subsequent developments will be retained and kept in accordance with the Data Protection Act 1998.

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