

Bar Hill Parish Council

Disciplinary Procedure

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.

Principles

- a) No disciplinary action will be taken against an employee until the case has been fully investigated.
- b) At every stage in the procedure the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case
- c) 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.
- d) 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.
- e) An employee will have the right to appeal against any disciplinary penalty imposed.
- f) The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

The Procedure for Misconduct and Gross Misconduct

The following lists examples of **misconduct** which will normally give rise to formal disciplinary action:

- Unauthorised absence from work
- Persistent short term and/or frequent absences from work with or without a medical reason
- Lateness for work or poor time keeping
- Inappropriate standard of dress
- Minor breaches of Health and Safety or other or procedures
- Failure to perform their job to the standard expected or in line with their job description/objectives
- Time Wasting
- Disruptive behaviour
- Misuse of the Council's facilities (e.g. telephone, computers, email or internet)
- Refusal to carry out reasonable requests or instructions
- Failure to follow any agreed Council procedure

This list is not exhaustive, and offences of a similar nature will result in disciplinary action being instigated. Persistent or frequent absence on medical grounds and long term sickness will be dealt in the Sickness Absence Policy.

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
- Being under the influence of illegal drugs or excessive alcohol
- 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 acts of insubordination

- Serious breach of duty to keep information of the council, its service providers and its clients confidential
- Unauthorised entry to computer records
- Any action whether committed on or off the premises, that is likely to or does bring the council into disrepute
- Serious negligence which causes or might cause significant loss, damage or injury
- Accepting bribes or incentive payments from suppliers
- Unauthorised use of funds or credit
- Working with an external agency to provide information which would be detrimental to and cause commercial risk to the council

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 that places extreme pressure on the mutual trust which exists in an employment relationship.

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 members of the Staffing Committee and involve an informal meeting initially. However, where the matter is more serious, or an informal action has not brought about the necessary improvement the following procedure will be used.

Formal Action

The level of warning received for misconduct/gross misconduct will depend on how serious the council considers the alleged action(s) to be and the previous conduct of the employee. In the event of alleged gross misconduct, the formal process may commence at Stage 4

Disciplinary Letters

If there is concern about an employee's conduct or behaviour then a letter will be given to the employee advising them 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 and if invoked at stage 4 for Gross Misconduct the letter will warn that a potential outcome could be dismissal. The time, date and location of the meeting will also be advised. Any documents to be produced at the meeting will also be provided.

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 time to prepare their case e.g. within 5 working days of the letter being sent, where practically possible. At the meeting the manager (or in the case of the Clerk being disciplined, the Chair) 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 unforeseen circumstances out of their control (e.g. illness) the council will reasonably rearrange the meeting. However, if the employee fails to attend the rearranged meeting without good reason the meeting can be held and a decision made in the employee's absence.

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. They 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
- their right of appeal

A brief note if 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 actions, a WRITTEN WARNING will be given to the employee by the line manager (or in the case of the Clerk being disciplined by the Chair). 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 the written warning will be kept in file but 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 to appeal. A copy of this final written warning will be kept by the line manager (or in the case of the Clerk being disciplined by the Chair) but will be spent after 12 months (but in exceptional circumstances this 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 there is reasonable ground to believe gross misconduct has occurred, DISMISSAL may result. The employee will be given a written statement of the allegations against them, invited to a meeting and then be notified in writing of the reasons for the decision taken at the meeting. Penalties at this stage may include dismissal with notice or summary dismissal (i.e. without any notice), Final Written warning with/without demotion, loss of pay or loss of seniority. If dismissal is the outcome, the employee will be advised of the date on which the employment will terminate. In all cases the employee has the 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

Suspension

If an employee is accused of an act of gross misconduct, they may be suspended from work on full pay while the council investigate the alleged offence. Only the appropriately convened committee has 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 the premises,

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 it shearing and appeal panel plans early on in the disciplinary process

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 stages of disciplinary action for misconduct/poor performance or gross misconduct.

An employee who wishes to appeal against a disciplinary decision should inform the Chair within 5 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 has the right to be accompanied by a colleague or accredited Trade Union official 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 can not be increased. The decision taken at the appeal will be final.

Right to be Accompanied

At each formal stage of the 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. 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 employees case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee. The companion cannot however answer questions on the employees behalf or address the hearing if the employee does not wish them to or prevent the employee explaining their case.

Hearing Panels

The Society of Local Council Clerks (SLCC) advise that council establish hearing panels to hear disciplinary and grievance hearings on an annual basis so that if a dispute does arise in the workplace the elected members involved are already trained and briefed on their duties as a hearing or appeal panel member. In situations where individual members are implicated in the dispute or have undertaken an investigatory role then they will need to be substituted as panel members.

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.

Grievances Raised During Disciplinaries

In some circumstances when a disciplinary process had commenced an employee chooses to exercise their right to raise an internal grievance about the employment relationship with the council and/or individual members. The SLCC recommends in line with ACAS advice, that in this circumstance, the 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.

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 their job duties and their relationships with employer, colleagues, subordinates or residents.

Getting It Wrong

Failure to follow the ACAS Code of Practice (available at www.acas.org.uk) can lead to an Employment Tribunal awarding an uplift of an award against the council of up to 25%. Tribunals dealing with unfair dismissal claims are particularly interested in whether the employer followed a procedure and whether the employer acted fairly and reasonably. One way in which to avoid such a penalty is to have a agreed procedure, communicate that procedure to staff and members, revisit and review the procedure regularly and have some training for those who are expected to operate the procedure.