

Disciplinary and Grievance Procedures

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Disciplinary and Grievance Procedures

Introduction

This document details the disciplinary procedure that will normally be followed in the event of misconduct. The policy will be applied fairly, consistently and in accordance with the Equality Act 2010 which, replaced and brought together previous legislation such as the Sex Discrimination Act 1975, Race Relations Act 1976, Disability Discrimination Act 1995 and Equal Pay Act 1970 helping employees achieve and maintain acceptable standards of conduct and job performance.

Many problems can be raised and settled during the course of everyday working relationships. Employees should aim to settle most grievances informally with their line manager.

This document is based on and complies with the 2015 ACAS Code of Practice and the model has been published in association with the National Association of Local Councils (NALC). It aims to encourage and maintain good relationships between the Council and its employees by treating grievances seriously and resolving them as quickly as possible. It sets out the arrangements for employees to raise their concerns, problems or complaints about their employment with the Council.

Principles

- No disciplinary action will be taken against an employee until the case has been fully investigated
- At every stage in the procedure the employee will be advised of the nature of the complaint against him / her and will be given the opportunity to state his/her case before any decision is made
- 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.
- 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
- An employee will have the right to appeal against any disciplinary penalty imposed

1. Disciplinary Procedure

1.1 Misconduct

The following list, which is not exhaustive, provides examples of conduct that will normally be regarded as misconduct leading to disciplinary proceedings:

- Failure by an employee to perform the duties and responsibilities contained in his / her Contract of Employment or to the standard expected by the Parish Council
- Unsatisfactory time keeping
- Unauthorised absenteeism
- Unsatisfactory sickness record
- Minor breaches of rules or policies
- Any other conduct that the Parish Council decides constitutes misconduct

The following list, which is not exhaustive, provides examples of conduct that will normally be regarded as gross misconduct leading to disciplinary proceedings, suspension or dismissal:

- Refusal or repeated failure by an employee to carry out his / her duties
- Failure to maintain correct accounting records
- Falsification of documents or information
- Unauthorised disclosure of confidential information
- Any act of dishonesty
- Any act of unlawful discrimination
- Assaulting a fellow employee, councillor or any other person whilst acting or purporting to act on behalf of the Parish Council
- Using insulting, abusive, indecent or offensive behaviour towards a fellow employee, councillor or any other person whilst acting or purporting to act on behalf of the Parish Council
- Serious or repeated harassment (including sexual and racial harassment)
- Incapacity at work due to the influence of alcohol, unprescribed drugs or any other substance
- Causing wilful damage to Parish Council property
- Theft, unauthorised use or possession of Parish Council property

- Conduct that brings the Parish Council into disrepute
- Any other conduct that the Parish Council decides constitutes gross misconduct

1.2 Verbal Warnings

- Verbal Warnings are issued for most first instances of minor misconduct, depending on the seriousness of the offence. If the employee is given a Verbal Warning, it will be given by the Chairperson and he / she will be warned of the likely consequences of any further disciplinary offences or a failure to improve his / her conduct to the satisfaction of the Parish Council. The Parish Council will retain a written note confirming the Verbal Warning and a copy will be sent or given to the employee.
- A Verbal Warning will remain in force for six months.

1.3 First Written warning

- In the case of a more 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 Chairperson and will set out:
 - the nature of the offence, the improvement required (if appropriate) and over what period
 - the likely consequences of any further offence or failure by the employee to improve his / her conduct to an acceptable standard
 - that further offences will result in further disciplinary action
 - the employee's right of appeal
- A First Written Warning will remain in force for one year.

1.4 Final Written Warning

- If further misconduct occurs within the time period specified in a First Written Warning, or if the misconduct is sufficiently serious enough to warrant only one written warning, the employee will be given a Final Written Warning.
- A Final Written Warning will be issued by the Chairperson and will set out:
 - the nature of the offence, the improvement required (if appropriate) and over what period
 - the likely consequences of any further offence or a failure by the employee to improve his / her conduct to an acceptable standard
 - that further offences will result in further disciplinary action up to and including dismissal
 - the employees right of appeal
- A Final Written Warning will remain in force for one year.

1.5 Suspension

If an employee is accused of any gross misconduct he / she may be suspended from work on full pay pending the outcome of an investigation into the alleged offence(s). The Parish Council will then follow procedures detailed in 1.6 below.

1.6 Formal Disciplinary Procedure

- In the case of further misconduct within the time period specified in any Final Written Warning or allegation of any gross misconduct, the following formal disciplinary procedure will be followed.
- The Chairperson will appoint a panel of three members to investigate the alleged misconduct and establish the facts, taking into account the statements of any available witnesses.
- The panel will set out in writing the alleged conduct or other circumstances that led the Parish Council to contemplate taking disciplinary action against or dismissing the employee and will send or give the employee a copy. The employee will then be invited to attend a disciplinary meeting to discuss the matter. The employee will be provided with a reasonable opportunity to consider his / her response to the information provided in the statement before attending the meeting.
- Disciplinary meetings will normally be convened within ten working days of the Parish Council sending or giving the employee the written statement. The Parish Council may appoint an independent adviser to assist the panel with the disciplinary process.
- The employee must take all reasonable steps to attend the disciplinary meeting and has the right to be accompanied by a representative.
- If the disciplinary meeting is inconvenient for either the employee / ex-employee or his / her representative, they have the right to reschedule the meeting by up to five working days to a mutually agreeable time and date.
- A disciplinary meeting may be adjourned to allow matters raised during the course of the meeting to be further investigated or to afford the panel time to consider their decision.

- The findings of the panel will be reported to the Chair / Chairman then discussed at the next scheduled Parish Council meeting.
- If the Parish Council believes the employee is guilty of gross misconduct, his / her employment will be terminated without notice or pay in lieu of notice.
- After the findings have been ratified or amended at the Parish Council meeting, the employee will be informed of the decision in writing within five working days.
- If the employee wishes to appeal against the result, he / she must inform the Parish Council in writing within five working days of receiving written notification of the decision.
- If the employee notifies the Parish Council that they wish to appeal, they will be invited to attend a disciplinary appeal meeting before the full Council at the next scheduled Parish Council meeting. Members of the public will be excluded from this part of the meeting under Council Standing Order due to the confidential nature of the discussions. The employee must take all reasonable steps to attend that meeting and has the right to be accompanied by a representative.
- If the disciplinary appeal meeting is inconvenient for either the employee or his / her representative, they have the right to reschedule the meeting by up to five working days to a mutually agreeable time and date when an extraordinary Parish Council meeting will be convened.
- Information about an employee's disciplinary matter will be restricted to those involved in the disciplinary process. A record of the reason for disciplinary action and the action taken by the Council is confidential to the employee. The Council in accordance with the General Data Protection Regulation UK (GDPR) will hold the employee's disciplinary records.
- Audio or video recordings of the proceedings at any stage of the disciplinary procedure are prohibited, unless agreed by all affected parties as a reasonable adjustment that takes account of an employee's medical condition.

After the disciplinary appeal meeting the employee will be informed of the Parish Council's final decision in writing within five working days.

1.7 The Appeal

An employee who is the subject of disciplinary action will be notified of the right of appeal. His/her written notice of appeal must be received by the Council within five working days of the employee receiving written notice of the disciplinary action and must specify the grounds for appeal. The grounds for appeal include:

- a failure by the Council to follow its disciplinary policy;
- the Sub-Committee's disciplinary decision was not supported by the evidence;
- the disciplinary action was too severe in the circumstances of the case; and
- new evidence has come to light since the disciplinary meeting.

Where possible, the appeal will be heard by a panel of at least three members of the Council who have not previously been involved in the case. This includes the Investigator. The appeal panel will appoint a Chairman from one of its members.

The employee will be notified, in writing, within 10 working days of receipt of the notice of appeal of the time, date and place of the appeal meeting. The employee will be advised that a companion - a workplace colleague, a trade union representative, or a trade union official, may accompany him.

At the appeal meeting, the Chairman will:

- introduce the panel members to the employee;
- explain the purpose of the meeting, which is to hear the employee's reasons for appealing against the disciplinary decision; and
- explain the action that the appeal panel may take.

The employee (or companion) will be asked to explain the grounds for appeal. The Chairman will inform the employee that he/she will receive the decision and the panel's reasons, in writing, usually within five working days of the appeal hearing. The appeal panel may decide to uphold the disciplinary decision of the initial Committee, substitute a less serious sanction or decide that no disciplinary action is necessary. If it decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file. If an appeal against dismissal is upheld, the employee will be paid in full for the period from the date of dismissal and continuity of service will be preserved. The appeal panel's decision is final.

2. Grievance Procedure

2.1 Purpose and Scope

This process is based on the NALC Legal Topic Note 22 2013 and complies with the 2015 ACAS Code of Practice.

It aims to encourage and maintain good relationships between Parish Councilors and its employee by treating grievances seriously and resolving them as quickly as possible. It sets out the arrangements for employees to raise their concerns, problems or complaints about their employment with the Council. The policy will be applied fairly, consistently and in accordance with the Equality Act 2010.

Many problems can be raised and settled during the course of everyday working relationships. Employees should aim to settle most grievances informally with their line manager (Chairperson).

This document confirms:

- employees have the right to be accompanied or represented at a grievance meeting or appeal by a trade union representative or work colleague. The companion will be permitted to address the grievance/appeal meetings, to present the employee's case for his /her grievance/appeal and to confer with the employee. The companion cannot answer questions put to the employee, address the meeting against the employee's wishes or prevent the employee from explaining his/her case
- the Council will give employees reasonable notice of the date of the grievance/appeal meetings. Employees and their companions must make all reasonable efforts to attend. If the employee's companion is not available for the proposed date of the meeting, the employee can request a postponement and can propose an alternative date that is within five working days of the original meeting date
- any changes to specified time limits must be agreed by the employee and the Council
- an employee has the right to appeal against the decision about his/her grievance. The appeal decision is final
- information about an employee's grievance will be restricted to those involved in the grievance process. A record of the reason for the grievance, its outcome and action taken is confidential to the employee. The employee's grievance records will be held by the Council in accordance with the Data Protection Act 2018
- recordings of the proceedings at any stage of the grievance procedure are prohibited, unless agreed as a reasonable adjustment that takes account of an employee's medical condition
- if an employee who is already subject to a disciplinary process raises a grievance, the grievance will normally be heard after completion of the disciplinary procedure
- if a grievance is not upheld, no disciplinary action will be taken against an employee if he/she raised the grievance in good faith
- the Council may consider mediation at any stage of the grievance procedure where appropriate, (for example where there have been communication breakdowns or allegations of bullying or harassment). Mediation is a dispute resolution process which requires the Council's and the employee's consent
- timescales indicated are best practice and if timings are under pressure the council should ensure that all parties are aware of delays and consent to amended timeframes

2.2 Informal Grievance Procedure

The Council and its employees benefit if grievances are resolved informally and as quickly as possible. As soon as a problem arises, the employee should raise it with his/her manager to see if an informal solution is possible. Both should try to resolve the matter at this stage. If the employee does not want to discuss the grievance with his/her manager (for example, because it concerns the manager), the employee should contact another member of the Council.

2.3. Formal Grievance Procedure

If it is not possible to resolve the grievance informally, or if informal efforts to resolve a dispute have failed, the employee may submit a formal grievance. It should be submitted in writing to the chairman of Council.

The Chairman will appoint a sub-committee of three members to investigate the grievance. The sub-committee will appoint a Chairman from one of its members. No councillor with direct involvement in the matter shall be appointed to the sub-committee.

2.4. Investigation

The sub-committee will investigate the matter before the grievance meeting, which may include interviewing others (e.g. employees, councillors or members of the public). The sub-committee may delegate this responsibility to another officer or external consultant.

2.5. Notification

Within 10 working days of the Council receiving the employee's grievance, the employee will be asked, in writing, to attend a grievance meeting. The sub-committee's letter will include the following:

- the names of its Chairman and other members.
- a summary of the employee's grievance based on his/her written submission.
- the date, time and place for the meeting. The employee will be given reasonable notice of the meeting that will be within 25 working days of when the council received the grievance.
- the employee's right to be accompanied by a trade union representative or work colleague.
- a copy of the Council's grievance policy.
- confirmation that, if necessary, witnesses may attend on the employee's behalf and that the employee should provide the names of his/her witnesses at least five working days before the meeting.
- confirmation that the employee will provide the Council with any supporting evidence at least five working days before the meeting.

2.6. The Grievance Meeting

At the grievance meeting:

- the Chairman will introduce the members of the sub-committee to the employee
- the employee (or companion) will set out the grievance and present the evidence..
- the Chairman will ask the employee what action does he/she wants the council to take; any member of the sub-committee and the employee (or the companion) may question any witness.
- the employee (or companion) will have the opportunity to sum up the case
- the Chairman will provide the employee with the sub-committee's decision, in writing, within five working days of the meeting. The letter will notify the employee of the action, if any, that the council will take and of the employee's right to appeal.
- a grievance meeting may be adjourned to allow matters that were raised during the meeting to be investigated by the sub-committee.

2.7. The Appeal

If an employee decides that the sub-committee has not satisfactorily resolved his/her grievance, he/she may submit a written appeal to the Council. An appeal must be received by the Council within five working days of the employee receiving the sub-committee's decision and must specify the grounds of appeal.

Appeals may be raised on a number of grounds, e.g.:

- a failure by the Council to follow its grievance policy
- the decision was not supported by the evidence
- the action proposed by the sub-committee was inadequate/inappropriate
- new evidence has come to light since the grievance meeting.

A panel of three members of the Council who have not previously been involved in the case will hear the Appeal. There may be insufficient members of the Council who have not previously been involved. If so, the appeal panel will be a committee of three council members who may include individuals nominated by the County Association. The appeal panel will appoint a Chairman from one of its members.

The employee will be notified, in writing, within 10 working days of receipt of the appeal of the time, date and place of the appeal meeting. The meeting will take place within 25 working days of the council's receipt of the appeal. The employee will be advised that a trade union representative or work colleague may accompany him.

At the appeal meeting, the Chairman will:

- introduce the panel members to the employee
- explain the purpose of the meeting, which is to hear the employee's reasons for appealing against the decision of the original sub-committee
- explain the action that the appeal panel may take.

The employee (or his/her companion) will be asked to explain the grounds of his/her appeal.

The Chairman will inform the employee that he/she will receive the decision and the panel's reasons, in writing, within five working days of the appeal meeting.

The appeal panel may decide to uphold the decision of the original sub- committee or substitute its own decision.

The decision of the appeal panel is final.

2.8 Confidentiality:

So far as is reasonably practicable, the Council will keep any grievances confidential between the panel investigating the grievance, the aggrieved 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, parties will be so advised.

2.9 Record Keeping:

In all cases, written records of the nature of the grievance raised, the Council'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 2010.

3. Grievances raised during a Disciplinary

In some circumstances, when a disciplinary process has commenced, an employee chooses to exercise their right to raise an internal grievance about the employment relationship with the council or individual members. NALC recommends, in line with ACAS advice, that disciplinary matters are placed on hold until the grievance has been voiced and actions towards a resolution have been progressed. In exceptional circumstances it is pragmatic to deal with the two disputes concurrently but NALC would advise caution and specialist advice should be sought if this arises.