

## GRIEVANCE AND DISCIPLINARY POLICY AND PROCEDURE

Adopted by Full Council on: 1<sup>st</sup> February 2022

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### Introduction.

This policy supplements the employees Contract of Employment, is adapted from the NALC Legal Topic Note LTN22 published in 2016 and provides guidance on:

- The **grievance process** on how an employee can raise work related concerns.
- The **disciplinary process** on how the council can deal with concerns about employee misconduct or inferior performance.

Many grievance and disciplinary matters can be resolved informally but formal policies can help councils deal with employment disputes fairly, consistently, and in accordance with equality legislation and the ACAS code of practice.

In some cases, it may be necessary to use section 102(3) powers under the 1973 Local Government Act to establish a Staffing Sub-committee including non-councillor members to ensure compliance with disputes legislation.

### GRIEVANCE POLICY AND PROCEDURE

The Council recognises that an employee may feel aggrieved about an aspect of their employment. Each employee has the right to raise this grievance and to expect that management will consider it and respond.

### PURPOSE

The purpose of the accompanying procedure is to provide a framework for dealing promptly and fairly with such grievances. The aim is to resolve grievances as near as possible to their point of origin.

Matters to be dealt with under the Council's grievance procedure include all questions relating to the individual rights of employees in respect of their employment other than those:

- lodged outside of the time limits set out in the accompanying procedure unless with the agreement of the Parish Clerk.
- which have already been considered in accordance with the procedure.
- arising from a disciplinary or capability process in which the employee is already involved and where there is an appeals procedure in place.
- in respect of issues over which the Council has no control e.g., external legislation.
- which are already the subject of a collective grievance or dispute.

### PROCEDURE

Where the parish clerk is aggrieved about any matter relating to their employment they should raise the matter informally with the Chair as soon as possible and other than in exceptional circumstances within **twenty working days** of the incident or event. However, the employee will be permitted to raise as part of a grievance a series of directly related incidents having a cumulative effect.

### **Informal resolution**

The chair should consider and seek to resolve the grievance within ten working days by meeting with the clerk to discuss. Should the chair determine that further investigation is required the case will be adjourned for a period not to exceed a further ten working days during which time the chair will conduct any necessary research, including, if appropriate, consulting with other parties.

Whether or not this proves possible the chair should in every case inform the employee of a decision in writing within five working days and, if appropriate, any action taken.

The council employee may wish to seek the advice of a trade union representative or colleague prior to raising a grievance at this informal level.

### **Further hearing**

If the employee is not satisfied with the result of the informal process they can take the matter up with the Chair in writing, stating the nature of the grievance. This should be done within **ten working days**. A formal written response to the grievance should be issued within five working days.

It is not expected that other parties would attend the hearing. However, if it is determined by the chair that their contributions would facilitate consideration of the grievance they will be asked to make themselves available.

A formal written response to the grievance should be issued within five working days of grievance hearing as appropriate.

An individual raising a formal grievance may be accompanied throughout the process by a trade union representative or colleague of their choice and reasonable preparation for the hearing will be allowed.

The timescales shown in the above procedure may be altered by mutual agreement.

## **DISCIPLINARY PROCEDURE**

### **PURPOSE**

This procedure is designed to help and encourage all employees to achieve and maintain acceptable standards of conduct and job performance. The aim is to ensure consistent and fair treatment for the individual.

In accordance with the Employment Rights Act 1996, Human Rights Act 1998, and the ACAS Code of Practice on Disciplinary Procedures this procedure sets out the framework for resolving issues relating to misconduct and unsatisfactory performance.

This procedure will apply to all employees unless it conflicts with contractual or statutory requirement, which will take precedence. It will be applied fairly, consistently and in accordance with the Equality Act 2010.

### **GENERAL PRINCIPLES**

The procedure is not a substitute for good management practices and should only be invoked when initial attempts to improve conduct have been made following discussions between the employee and the Chair. However, where there has been a serious breach of disciplinary rules or gross misconduct the formal procedure should be actioned immediately.

- No disciplinary action will be taken against an employee until the circumstances have been fully investigated.
- 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.
- The employee has the right to be represented at disciplinary hearings and appeals.
- In all instances of alleged misconduct, the employee will be given at least five working days' notice of the requirement to attend a hearing or appeal. Should the employee fail to attend without an acceptable reason, then the chair of the hearing or appeal may proceed in the employee's absence.
- Any disciplinary action taken will depend on the nature of the offence, the past recorded behavior of the employee concerned, the consequence to the council of the offence and any explanation presented by the employee.
- Employees' have the right to appeal against any disciplinary warnings and dismissal.

#### **REPRESENTATION**

Employees have the right to representation at hearings and appeals relating to any stage of the formal procedure. This can be a trade union representative, non-union employee representative or a work colleague.

Representatives have the right to address the hearing or appeal. They may also ask questions and present the employee's case. However, they have no right to answer questions on the employee's behalf.

#### **INFORMAL PROCEDURE**

Where a minor disciplinary issue arises, the chair will normally consider the matter and will resolve it if they can without recourse to the formal procedure.

Allegations of more serious misconduct or where a previous warning has been given but the required improvement has not been made, should immediately be referred to the Chair who will then be responsible for nominating an investigating officer.

The person who conducts an investigation should not participate in any subsequent decision to act under the procedure. Likewise, the person hearing the case should not be involved in the investigation beforehand. It is important that respective roles are identified at an early stage so that those roles are not compromised.

The Chair may provide verbal or written warnings for minor misconduct. Only the full council has the right to suspend an employee.

#### **Informal procedure guidance**

Where a minor breach of acceptable/ established standards of conduct occurs which does not justify formal disciplinary action, the Chair will advise the employee concerned of the conduct or standard

expected in the future. In many cases this will provide sufficient encouragement for the employee not to commit further acts of misconduct.

The employee will be offered guidance, support, and where appropriate additional training to achieve the necessary standards. Representation will not normally be appropriate. The Chair should make a note of such informal advice and guidance and should set out in writing the required improvements and standards of conduct that are expected in the future. Records of informal advice/counselling should be kept on employee's personal files.

### **FORMAL PROCEDURE**

A Formal procedure will apply when:

- previous informal advice or warnings have proved ineffective.
- the allegation is of a serious nature.
- several minor allegations are made which taken together constitute a serious breach of discipline.

### **Suspension**

In some circumstances the council may consider suspension, with pay, pending further investigation or until the disciplinary hearing takes place. Suspension may be appropriate in cases potentially involving gross misconduct; relationships have broken down; there is a risk to the employer's property or to other people. An employee should be advised that suspension does not constitute disciplinary action.

An employee should be advised of the reasons for suspension. The period of suspension should not normally last for more than twenty working days, however where necessary this period can be extended.

The decision whether suspension is necessary can be reviewed at any time in the disciplinary process.

### **Investigation**

Before any decision can be made about whether a disciplinary hearing is necessary, an investigation must take place. The Chair should appoint an appropriate investigating officer, who could be an external adviser, who will report back with their findings and make recommendations as to whether a disciplinary hearing should be convened.

The responsibilities of the Investigating officer are to collect evidence by interviewing any relevant witnesses and gathering all documentation.

An Investigatory Interview should be held with the employee concerned giving five working days' written notice outlining the nature of the allegation. The purpose of the interview is to present the findings of the investigation to the employee and allow them to answer or shed light on the potential allegations to assist the investigating officer to decide if he or she should recommend a disciplinary hearing and/or whether any further investigation is needed.

For the benefit of the employee and the council any investigation must be concluded within a reasonable timescale. If there is a delay in completing the investigation it is the responsibility of the Investigating officer to regularly update the employee or their representatives on the progress of the investigation.

Once the Investigating officer has gathered all the relevant facts and reviewed the evidence, a report

should be drafted to the Staffing Sub-Committee recommending one of the following.

- take no further action and inform the employee accordingly
- advise the arrangement of counselling, training, extra supervision, or written advice as appropriate
- arrange a disciplinary hearing

### **Arranging a Hearing**

If, following the recommendations of the investigating officer, the Chair concludes that a hearing is required then the employee should be given at least five working days' notice in writing. The letter should include a clear written statement of the allegation and should enclose any documentary evidence being relied upon and a reminder of the employee's right to be represented.

The investigating officer is responsible for presenting the case and making arrangements for any witnesses that he or she relies upon, to attend the meeting.

The employee is responsible for arranging any representation they choose to have and any witnesses that they may wish to call. Details of any witnesses the employee intends to call and a copy of all documents that the employee may wish to refer to at the hearing must be submitted to the Investigating officer at least three working days prior to the hearing.

### **Conducting a hearing**

The panel for a hearing would normally comprise the Chair and an independent representative to advise, as appropriate.

### **Objective of the hearing**

- to hear the evidence in respect of the allegation, the employee's response and to decide whether or not the allegation is substantiated
- if the allegation is substantiated, determine the disciplinary sanction to be applied considering the seriousness of the offence and having regard to previous relevant disciplinary history

### **Hearing procedure**

- Introduction of panel members and their roles
- clarify the purpose of the hearing and state the allegation
- presentation of the case by the investigating officer with witnesses called as necessary
- questions by employee and/or their representative
- questions by the panel
- employee and/or their representative to state their case with witnesses called as necessary
- questions from investigating officer
- questions from panel
- investigating officer to sum up
- employee/representative to sum up
- panel adjourn to make their decision
- hearing reconvened and the employee/representative informed of the decision and, if necessary, their rights of appeal

Requests for an adjournment can be made at any stage and it is up to the chair to decide whether or not a request should be granted.

The decision of the panel must be confirmed to the employee in writing within five working days. The letter should clearly set out:

- panel decision
- length of time that any warning will be active for
- expected improvement in conduct
- assistance that will be provided to achieve this
- employee's right to appeal

### **LEVELS OF DISCIPLINARY ACTION**

In determining the appropriate disciplinary action, regard should be given to the employee's previous record, the gravity of the offence and any explanation given.

Although the procedure implies a sequential approach there may be certain circumstances where the matter needs to be considered immediately under Stages 2, 3 or 4 (below).

#### **Stage 1 Oral Warning**

For a minor offence, a formal verbal warning (confirmed in writing) making it clear that further misconduct will render the employee liable to further disciplinary action including more severe consequences.

#### **Stage 2 First Written Warning**

For a more serious offence or where a previous warning to the employee has not resulted in the required improvement to their conduct.

#### **Stage 3 Final Warning**

For a sufficiently serious offence, which might warrant only one written warning but is insufficiently serious to justify dismissal, or where previous warnings have been ineffective.

#### **Stage 4 Dismissal**

For an act or acts of misconduct, other than gross misconduct, by an employee who is under a final written warning. The employee will be liable to dismissal with notice or pay in lieu of notice.

In cases where gross misconduct is established the employee will be liable to summary dismissal, which is without notice or pay in lieu of notice.

### **LENGTH OF WARNINGS**

Records of informal meetings and formal warnings will be kept on employee's personal files. An oral warning will be live for 6 months and written warnings live for 12 months from the date of the disciplinary hearing. Final written warnings will be live for 2 years.

### **THE RIGHT OF APPEAL**

An employee has the right to appeal against disciplinary action resulting in a warning or their dismissal. Three members an Appeal Committee will hear the appeal, providing that they have had no previous involvement in the matter, assisted by an independent adviser.

#### **Making an appeal**

An employee who wishes to appeal must do so in writing to the chair. This must be done within ten working days of the disciplinary hearing informing them of the disciplinary action taken. The appeal

letter must set out the grounds for the appeal, normally under one of the following headings:

- the severity of the disciplinary action
- the findings of the Panel on a point of fact which is pertinent to the decision of the hearing
- a failure to adhere to the disciplinary procedure

### **Arranging an appeal**

The date and time of the appeal will be organised by the chair. It is the responsibility of each side to prepare themselves for the appeal including arranging for any witnesses to attend.

The chair of the original panel and the employee or their representative will, where possible, agree papers for submission to the appeal 5 days prior to the hearing.

### **Conducting an appeal hearing**

The objective is to review the decision of the disciplinary hearing and decide whether that action is warranted or not and, if the action is not warranted, to determine what action if any is appropriate. In doing so the Appeal Panel will have regard to seriousness of the offence and any previous relevant disciplinary history.

### **Appeal hearing procedure**

- appellant puts their case including calling any witnesses
- the chair of the previous hearing, who took the disciplinary action puts their case for having done so, which may include calling any witnesses
- the appellant can ask questions of the witnesses
- the appeal hearing panel can ask questions of both parties and witnesses
- both parties can sum up should they wish to do so. No added information should be introduced at this stage and the appellant should have the opportunity to sum up last
- the appeal is adjourned to allow the appeal hearing panel to reach a decision
- the appeal is reconvened and both parties are informed of the decision
- appeal hearing panel writes to both parties informing them of their decision within five working days

The appeals hearing panel has the right to call its own witnesses should it consider this to be of assistance in making its decision.

### **TRADE UNION OFFICIALS**

In normal circumstances no action will be taken against an officer of a recognised trade union until the matter has been discussed with a full-time officer of that union.

### **DISCIPLINARY RULES**

Waltham Parish Council will apply a test of reasonableness by considering whether a reasonable person would be aware that disciplinary action would result from a certain act or omission.

The following are examples of the types of conduct which are unacceptable, and which may lead to disciplinary action. The list is not exhaustive and other behaviour not listed may lead to disciplinary action when necessary.

- Poor timekeeping/ attendance
- Unjustifiable absence from work
- Waste, loss, or damage of Council property through failure to take due care
- Negligence or failure in performance of duty
- Being under the influence of alcohol or drugs

## **GROSS MISCONDUCT**

Unacceptable conduct, which may be regarded as gross misconduct, is likely to lead to an employee's summary dismissal. This means dismissal without notice and occurs when the employment relationship between the Council and employee, and the trust, which is inherent in that, is irrevocably broken.

The following list gives examples of matters likely to be regarded as gross misconduct and is not exhaustive:

- Refusing to follow reasonable management instructions
- Theft from the Council, its members, or the public
- Physical assault or verbal abuse
- Fraud or deliberate falsification of records
- Falsification of qualifications
- Serious negligence which causes unacceptable loss, injury, or damage
- Serious acts of insubordination
- Serious breach of confidence
- Use of privileged information for personal gain
- Malicious damage to the Council's property
- Sexual misconduct at work
- Discrimination, victimisation, or harassment
- Serious breaches of safety rules
- Serious incapability through alcohol or drugs
- Accessing or distributing pornography on the Council's IT facilities

## **TRAINING**

Appropriate training will be given to any members who might be involved in disciplinary or appeals meetings to ensure they fulfil their responsibilities under this procedure.

*WPC/asm/January 2022*

## **References:**

- NALC October 2013 Legal Topic note LTN 7 Non-Councillor Members of Committees.
- NALC February 2016 Legal Topic note LTN 22 Disciplinary and Grievance Arrangements.
- ACAS November 2016 – Discipline and grievances at work – The ACAS guide.
- NALC December 2018 – Legal Topic Note LTN 9E – Handling Complaints (England).