

# NETTLEHAM PARISH COUNCIL

## DISCIPLINARY POLICY



### Introduction

- 1 This policy is based on and complies with the 2015 ACAS Code of Practice. It also takes account of the ACAS guide on discipline and grievances at work – Feb 2019

The policy is designed to help Council employees improve unsatisfactory conduct and performance in their job. Wherever possible, the Council will try to resolve its concerns about employees' behaviour informally, without starting the formal procedure set out below.

- 2 The policy will be applied fairly, consistently and in accordance with the Equality Act 2010.
- 3 This policy confirms:
  - informal coaching and supervision will be considered, where appropriate, to improve conduct and / or attendance;
  - the Council will fully investigate the facts of each case;
  - the Council recognises that misconduct and unsatisfactory work performance are different issues. The disciplinary policy will also apply to work performance issues to ensure that all alleged instances of employees' underperformance are dealt with fairly and in a way that is consistent with required standards. However, the disciplinary policy will only be used when performance management proves ineffective;
  - employees will be informed in writing about the nature of the complaint against them and given the opportunity to state their case;
  - employees will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary hearing;
  - employees may be accompanied or represented by a companion – a workplace colleague, a trade union representative or a trade union official - at any disciplinary or appeal meeting. The companion is permitted to address such meetings, to put the employee's case and 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 any meetings in this procedure; Employee must make all reasonable efforts to attend. Failure to attend any meeting may result in it going ahead and a decision being taken. An employee who does not attend a meeting will be given the opportunity to be represented and to make written submissions;
  - 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 unless it is unreasonable not to propose a later date;
  - any changes to specified time limits in the Council's procedure must be agreed by the employee and the Council;
  - 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 employee's disciplinary records will be held by the Council in accordance with the General Data Protection Regulation (GDPR);
  - 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;
  - employees have the right to appeal against any disciplinary decision. The decision following appeal is final;

- disciplinary action taken by the Council can include a written warning, final written warning or dismissal;
- this procedure may be implemented at any stage if the employee's alleged misconduct warrants this ;
- except for gross misconduct when an employee may be dismissed without notice, the Council will not dismiss an employee on the first occasion that it decides there has been misconduct;
- if an employee is suspended following allegations of misconduct, it will be on full pay and only for such time as is necessary. Suspension is not a disciplinary sanction. The Council will write to the employee to confirm any period of suspension and the reasons for it;
- the Council may consider mediation at any stage of the disciplinary procedure where appropriate (for example where there have been communication breakdowns or allegations of bullying or harassment). Mediation is a dispute resolution process that requires the consent of affected parties.

## **Examples of unsatisfactory work performance**

4 The following list contains some examples of unsatisfactory work performance: The list is not exhaustive.

- inadequate application of management instructions/office procedures;
- inadequate IT skills;
- unsatisfactory management of staff;
- unsatisfactory communication skills;
- poor performance;
- lack of capability by an Employee to carry out their job.

## **Examples of misconduct**

5 Misconduct is employee behaviour that can lead to the employer taking disciplinary action. The following list contains some examples of misconduct: The list is not exhaustive.

- unauthorised absence;
- poor timekeeping;
- misuse of the Council's resources and facilities including telephone, email and internet;
- refusal to follow reasonable instructions;
- breach of health and safety rules.

## **Examples of gross misconduct**

6 Gross misconduct is misconduct that is so serious that it is likely to lead to dismissal without notice. The Management recognises the following as acts of Gross Misconduct. (This is not an exhaustive list).

- Theft, or unauthorised possession of property belonging to the Council;
- Fraud or falsification of reports, accounts, expenses, bribery, corruption;
- Abusive or threatening behaviour of any nature;
- Being under the influence of alcohol or drugs.;
- Dishonesty in dealings with Management;
- Sexist, racist or any other behaviour against an individual, which could be classed as creating a hostile, intimidating or threatening environment;
- Serious breach of confidentiality;
- Fighting and acts of aggression;
- Deliberately damaging Council property;
- Deliberate breaches of Council Health and Safety procedures;
- Unauthorised access to Council computer files, software or any other such breach of confidentiality.

## Suspension

- 7 If allegations of gross misconduct or serious misconduct are made, the council may suspend the employee while further investigations are carried out. Suspension will be on full pay. Suspension does not imply any determination of guilt or innocence, as it is merely a measure to enable further investigation.
- 8 While on suspension, the employee is required to be available during normal hours of work in the event that the council needs to make contact. The employee must not contact or attempt to contact or influence anyone connected with the investigation in any way or to discuss this matter with any other employee or councillor.
- 9 The employee must not attend work. The council will make arrangements for the employee to access any information or documents required to respond to any allegations.

## The Procedure

### 10 **INFORMAL DISCIPLINE**

Should the Clerk be unhappy with either the conduct or performance of an Employee, they will initially discuss their concerns with the Employee on an informal basis.

The purpose of this meeting will be to guide and support the Employee to help them address the problem and perform to a standard acceptable to Management. For this reason the Clerk will take notes during this meeting, decide what action should result from the meeting and ask the Employee to sign the notes. Only the Clerk and Employee should attend this meeting. There will be no entitlement to be accompanied. Details/copy of the notes will be passed to the Chairman for their information.

### 11 **MEDIATION**

In the event that either party do not feel that performance/conduct issues are being addressed effectively, either an Employee or Clerk can request that the matter be subjected to mediation.

This will involve the use of a third party Mediator. In its simplest form, mediation will involve the Mediator talking to either party individually, to listen to their side of the issue. If the Mediator feels that a resolution to the problem is possible, a meeting will be arranged between all parties at which the Mediator will set out their assessment of the issues and invite both party to reach their own resolution. The resultant action plan should have the agreement and support of both parties, be set out in writing and be signed by all involved in the Mediation process.

### 12 **FORMAL DISCIPLINARY PROCEDURES**

If an issue regarding an Employee's conduct, behaviour or performance isn't fully addressed by informal methods/mediation, the Management will pursue the matter through its formal Disciplinary Procedures.

Typical examples of areas of concern may be poor performance, unacceptable and unexplained absenteeism, poor conduct and behaviour at work, or lack of capability by an Employee to carry out their job.

- 13 If the Personnel & Standards Panel decides that there is a case to answer, it will appoint a Review Panel of three councillors, to formally hear the allegations.
- 14 Meetings will be conducted as soon as reasonably possible after the incident(s) which are being investigated to ensure that facts and witness statements are clear and up to date. At this meeting Employees are entitled - and encouraged - to be accompanied by a work colleague from the Council, or trade union representative.

This is a four step procedure, which increases in the severity of its outcome if the issue isn't resolved at the previous step. Each step involves a formal meeting between the affected Employee and the Review Panel at which the Employee will be given every opportunity to put their side of the issue.

- 15 If the allegation of misconduct is proven, the meeting may result in the following action being taken by the Council against the Employee:

STEP No	ACTION TAKEN	LIVE PERIOD
1	Formal Oral Warning	Six months.
2	Formal Written Warning	Twelve months
3	Final Written Warning	Twelve months
4	Termination of Contract of Employment	N/A

Particularly severe acts of indiscipline may result in the Management bypassing Steps 1 and 2.

16 **GROSS MISCONDUCT**

Acts of Gross Misconduct, if proven after an appropriate investigation (*including searches of bags, coats and other personal effects, as well as cars, vehicles and any appropriate Council property*) and a Disciplinary Hearing, will result in Dismissal.

Employees accused of Gross Misconduct will be suspended on full pay and receive a written invitation to a Formal Disciplinary Hearing, giving them details of the allegation they are to answer, the date, time and venue of the meeting, and also inform them of their right to be accompanied by a work colleague from the Council or trade union representative. The letter will provide a minimum of 2 working days prior notice to the meeting.

- 17 The Council recognises the following as acts of Gross Misconduct. (This is not an exhaustive list).

- Theft.
- Abusive or threatening behaviour of any nature.
- Being under the influence of alcohol or drugs.
- Dishonesty in dealings with Management.
- Sexist, racist or any other behaviour against an individual, which could be classed as creating a hostile, intimidating or threatening environment.
- Breach of confidentiality.
- Failing to carry out reasonable Management instructions.
- Fighting and acts of aggression.
- Deliberately damaging Council property.
- Deliberate breaches of Council Health and Safety procedures.
- Unauthorised access to Council computer files, software or any other such breach of confidentiality.

- 18 Employees who have been dismissed for acts of Gross Misconduct do have a right to appeal against their dismissal.

- 19 Appeals should be submitted within a reasonable timescale following the dismissal, and addressed to the Chair of the Council. A reasonable timescale would normally be no longer than a week following the dismissal.

- 20 Employees submitting an appeal must make it clear that they are appealing against the decision to dismiss them, and set out the reasons for their appeal.

- 21 Once the Management have received notice of the Employee's decision to Appeal, they will follow the Appeal Procedure detailed below.

## THE DISCIPLINARY MEETING

- 22 The Review Panel will appoint a Chairman from one of its members.
- 23 No Councillor with direct involvement in the matter shall be appointed to the Panel. The employee will be invited, in writing, to attend a disciplinary meeting. The letter will confirm the following:
- the names of its Chairman and the other two members;
  - details of the alleged misconduct, its possible consequences and the employee's statutory right to be accompanied at the meeting;
  - a copy of the information provided to the Panel which may include the supporting evidence and a copy of the Council's disciplinary procedure;
  - the time and place for the meeting. The employee will be given reasonable notice of the hearing so that he /she has sufficient time to prepare for it - (at least 2 clear working days);
  - that witnesses may attend on the employee's and the Council's behalf and that both parties should inform each other of their witnesses' names at least two working days before the meeting;
  - that the employee may be accompanied by a companion - a workplace colleague, a trade union representative.
- 24 The purpose of the disciplinary meeting hearing is for the allegations to be put to the employee and then for the employee to give their perspective. It will be conducted as follows:
- the Panel's Chairman will introduce the members of the Panel to the employee and explain the arrangements for the hearing;
  - the Chairman will set out the allegations;
  - the Chairman will invite the employee to present their account;
  - the employee (or the companion) will set out his/her case and present evidence (including any witnesses and/or witness statements);
  - any member of the Panel and the employee (or the companion) may question any witness
  - the employee (or companion) will have the opportunity to sum up.
- 25 The Panel's Chairman will provide the employee with the Panel's decision with reasons, in writing, within five working days of the meeting. The Chairman will also notify the employee of the right to appeal the decision.
- 26 The disciplinary meeting may be adjourned to allow matters that were raised during the meeting to be further investigated by the Panel.

### Disciplinary action

- 27 If the Review Panel decides that there should be disciplinary action, it may be any of the following:

#### **i) Formal oral warning**

This will set out the performance problem, the improvement that is required, the timescale and any help that may be given. The employee will be advised that it constitutes the first stage of the disciplinary procedures.

A file note of the formal oral warning issued will be kept on the employee's personnel file. This lasts for a period of six months.

The employee has the right to appeal against this decision.

## **ii) First written warning**

- 28 If the employee's conduct has fallen beneath acceptable standards, a first written warning will be issued. A first written warning will set out:
- the reason for the written warning, the improvement required (if appropriate) and the time period for improvement;
  - that further misconduct/failure to improve will result in more serious disciplinary action
  - the employee's right of appeal;
  - that a note confirming the written warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for a specified period of time (e.g. 12 months).

## **iii) Final written warning**

- 29 If the offence is sufficiently serious, or if there is further misconduct or a failure to improve sufficiently during the currency of a prior warning, the employee will be given a final written warning. A final written warning will set out:
- the reason for the final written warning, the improvement required (if appropriate) and the time period for improvement;
  - that further misconduct/failure to improve will result in more serious disciplinary action up to and including dismissal;
  - the employee's right of appeal;
  - that a note confirming the final written warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for a specified period of time (e.g. 12 months).

## **iv) Dismissal**

- 30 The Council may dismiss:
- for gross misconduct
  - if there is no improvement within the specified time period, in the conduct which has been the subject of a final written warning
  - if another instance of misconduct has occurred and a final written warning has already been issued and remains in force.
- 31 The Council will consider very carefully a decision to dismiss. If an employee is dismissed, he/she will receive a written statement of the reasons for his/her dismissal, the date on which the employment will end and details of his/her right of appeal.
- 32 If the Panel decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file. Action taken as a result of the disciplinary meeting will remain in force unless it is modified as a result of an appeal.

## **The appeal**

- 33 An employee who is the subject of any disciplinary action will be notified of the right of appeal.

His/her written notice of appeal should be addressed to the Chair of the Council within five working days of the employee receiving written notice of the disciplinary action e.g. making it clear that they are appealing against the decision to dismiss them and also setting out the reasons for their appeal. Appeals made after one week will be considered if the Employee has a reasonable explanation for having taken so long.

- 34 The grounds for appeal may include;
- a failure by the Council to follow its disciplinary policy
  - the Panel's disciplinary decision was not supported by the evidence
  - the disciplinary action was too severe in the circumstances of the case
  - new evidence has come to light since the disciplinary meeting.
- 35 The appeal will be heard by a panel of three members of the Grievance, Disciplinary, Complaints and Appeals Panel (GDCAP) who have not previously been involved in the case. The appeal panel (GDCAP) will appoint a Chairman from one of its members.
- The Formal Appeal hearing will be held within fourteen days of receipt of the appeal request.
- 36 Employee will be notified, in writing, following receipt of the notice of appeal of the time, date and place of the Appeal meeting. The employee will be advised that he/she may be accompanied by a companion - a workplace colleague, a trade union representative.
- 37 At the appeal meeting, the Appeal Panel's 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
  - explain the action that the appeal panel may take.
- 38 The employee (or companion) will be asked to explain the grounds for appeal.
- 39 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.
- 40 The appeal panel may decide to uphold the disciplinary decision of the Disciplinary Panel, 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.
- 41 The decision of the appeal panel is final.
- 42 The decision to dismiss the employee will not be taken without the authority of the Council. The decision to dismiss will be confirmed in a letter signed by the Chair of the Council.

## **Records**

- 43 Full records should be kept including details of the nature of any breach of disciplinary rules or unsatisfactory performances, the employee's response, the action taken and the reasons for it, whether an appeal was made and, if so, its outcome and any subsequent developments. All records will be kept confidential and retained in accordance with the Data Protection Act 1998.

**Approved and adopted at the meeting of Nettleham Parish Council 14 July 20**

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