

3 EMPLOYMENT RELATED ISSUES

3.1 DISCIPLINARY POLICY, RULES & PROCEDURES

Stage 1 - Investigation

When disciplinary matters arise, an investigation may be carried out to establish the facts. The investigation takes into account statements of any available witnesses (including your own account) along with any other evidence such as documents and e-mails.

Sometimes it may be necessary to suspend you on full pay during the course of an investigation to avoid a potentially difficult situation or to allow a full and uninterrupted investigation to take place or where the facts, if proved, may result in your dismissal.

Suspension with pay is a temporary measure to allow an investigation and is not a form of disciplinary action or a penalty of any kind. It should not prejudice your rights and should not be seen as a presumption of guilt.

Stage 2 - Meeting

When any investigation is concluded a notice in writing giving details of the matter signed by the Chairman and authorised by the Council in accordance with their delegated responsibilities shall be given to you along with any evidence collected during the investigation.

You will be invited to attend a Disciplinary Panel meeting to discuss the allegations further held in the absence of the press or public.

You will be told what your potential sanctions could be, e.g. dismissal, first written warning etc. You will also be notified of your right to be accompanied at the meeting.

The purpose of the disciplinary meeting is to allow you to be able to state your case fully and to discuss any issues.

You have the right to be accompanied by a single companion at any Disciplinary meeting. The companion will be permitted to confer with you and allowed to address the meeting but not to answer on your behalf.

You must take all reasonable steps to attend this meeting. If you cannot attend, you should inform the person who has written to you inviting you to the meeting, in advance whenever possible, so that the meeting can be re-scheduled to another date or time.

If you persistently fail to attend scheduled meetings, you will be warned that the disciplinary meeting may go ahead without you, which could result in a decision being taken in your absence.

Capability Matters

You will be given details of any shortfall in your performance so you may understand the exact nature of the complaint against you and be able to respond in an appropriate and relevant manner.

Conduct Matters

You will be provided with details of the conduct giving rise to the disciplinary action and any allegations will be put to you in full. This allows you to answer those allegations and gives you an opportunity to fully state your case.

Following the Disciplinary meeting, the Council may need to undertake further investigations.

In these circumstances you will be invited in writing to a second reconvened Disciplinary meeting. This will be to discuss the outcome of any further investigations before a final decision is made.

Stage 3 - Sanctions

Following the Disciplinary meeting you will be informed of the outcome in writing. You will be informed of the sanction, how long this will remain on your personnel file and informed of your right to appeal against this decision.

Verbal Warning

Where your performance, conduct or attitude gives rise for concern and informal action has not been, or is not, sufficient to rectify the situation, the Chairman will meet with you. You will be given a verbal warning and will be told of the reasons for this. The solutions to the problems will be discussed. A timescale by which such improvements should be effected will be agreed. You will be made aware that the warning forms the initial stage of the disciplinary procedure. A note of the warning and solutions agreed will be placed on your Employee Record.

Written Warnings

If, after a further investigation or further incidents have occurred, it is decided that the improvements specified in the first meeting have not materialised, a second meeting will take place.

The Council's requirements concerning your behaviour and / or conduct, along with the future standard and behaviour that you should adhere to, will be discussed and presented to you in writing. A copy of the letter confirming the Written Warning will be placed on your Employee Record.

You will be advised that the warning will remain "live" on your Employee Record for a period of 12 months, after which it will be disregarded. You will also be advised that further offences will result in the disciplinary sanction being escalated, which could eventually lead to your dismissal.

You will be made aware that this warning forms the second stage of the disciplinary procedure. For more serious offences, a written warning may be given as the first step in the disciplinary process.

Final Warning

If, after a further investigation or further incidents have occurred, it is decided that the improvements specified still have not materialised a third meeting will take place.

Your continued failing performance and / or unacceptable behaviour, along with the expected solutions, will be discussed and presented to you in writing. You will be warned that failure to reach and maintain the requirements will result in dismissal. A copy of the letter confirming the Final Written Warning will be placed on your Employee Record.

You will be advised that the Final Written Warning will remain “live” on your Employee Record for a period of 12 months, after which it will be disregarded. You will also be advised that further offences will result in your dismissal.

Any written warning will include:

- Details of the misconduct which has taken place;
- The improvements required;
- The consequence of a further offence of failure to improve;
- The effective date of the warning;
- The specified time limit;
- The right to appeal.

Whilst the normal procedure will involve all three warnings, in cases where the offence is thought to be serious enough the first and / or second warnings may be omitted.

Typical examples of this would be refusals to obey reasonable instructions, unlawful discrimination and breaches of health and safety.

Depending on the circumstances, these may also be classed as gross misconduct.

Gross Misconduct

Where an employee is found guilty of gross misconduct it is our standard practice for the employee to be summarily dismissed.

The following are examples of conduct that are considered to amount to gross misconduct. This is not an exhaustive list:

- A serious or wilful breach of the misconduct rules;
- Indecent or immoral behaviour;
- Intoxication, either caused by alcohol or drugs, dangerous behaviour, fighting or physical assault;
- Deliberate falsification of any records, including time sheets, absence records etc, in respect of yourself or a fellow employee;
- The destruction, damage or sabotage of our property, or any property on our premises;
- Infringement of the health and safety rules, including smoking;
- Gross insubordination and / or the refusal to carry out legitimate instructions given by a supervisor or manager;
- Any breach of a statute which directly affects your ability to carry out your duties and / or the desired characteristics of your position;
- Any act of dishonesty;
- Unauthorised use of software, illegally copying software, gaining unauthorised access to a computer or a file on a computer, or committing any other breach of data security rules laid down by statute or the Council. This includes (but is not limited to) sending offensive or inappropriate e-mails or accessing, downloading, viewing or distributing offensive, unsuitable, obscene or pornographic web-pages or material from the internet;
- A serious breach of the Data Protection Regulations and / or the Code of Confidentiality;
- Any criminal conduct that affects the ability or suitability for your continued employment;
- Assisting, encouraging or procuring any other member of staff to commit any act which would justify gross misconduct;
- Harassment, Discrimination or Bullying of employees, patients, clients or suppliers;
- Bringing the Council into disrepute;
- Negligence which causes or might cause unacceptable loss, damage or injury.
- Accepting or offering a bribe or other secret payment or other breach of our bribery prevention policy.

Dismissal

If, it becomes apparent that the required standards of performance and / or behaviour have not materialised, a further investigation and meeting will be arranged.

Following the meeting, if it is decided that the improvements specified still have not materialised, and disciplinary action is to be taken, then you may be dismissed with the appropriate notice being given to you.

In all cases except gross conduct, dismissal will be on the notice as specified in your contract of employment.

Summary Dismissal

While it is envisaged that the warning procedure will apply to any employee who is not achieving the required standard of work or conducting themselves appropriately, provided that a full and proper investigation has been carried out, it may be possible to dismiss you summarily in cases of gross incompetence or gross misconduct.

In cases of gross misconduct or gross incompetence, you may be dismissed without going through the warning stages set out above.

After a thorough investigation into the circumstances and allowing you the opportunity of explaining your actions at a meeting, the Council reserves the right to summarily dismiss you.

In cases of summary dismissal, you will be dismissed without notice or pay in lieu of notice.

Alternative Penalties

Disciplinary action may also include suspension without pay or less than full pay, demotion or transfer to new duties whether or not at a lower grade.

In certain circumstances, an informal reprimand or warning may be more appropriate where only a minor infringement of the rules has taken place.

Appeals

You have the right to appeal against any disciplinary action at any stage.

An appeal must be made, in writing, and sent to the Vice Chairman within five (5) working days from the date the disciplinary action was taken. You must set out in full the basis of

your appeal and give details of why the penalty imposed is too severe, unfair or inappropriate in the circumstances.

An Appeal meeting will then be arranged within a reasonable period of time and the appeal will be heard by the Chairman or in their absence a designated Councillor. You must take all reasonable steps to attend the Appeal meeting.

You have the right to be accompanied at the Appeal meeting by a single companion. The companion will be permitted to confer with you and allowed to address the meeting but not to answer on your behalf.

No decision will be made at the meeting. It may be necessary to adjourn the meeting to investigate matters further.

The person chairing the Appeal should ensure that you have been given the opportunity to raise all matters and present the basis of your appeal in full.

Following the meeting, a letter confirming the decision will be sent to you within ten working days of the meeting, or if not practicable, as soon as possible.

You will be informed that this is the final stage of the Disciplinary Appeal Procedure.

Period of Warnings

Except in certain cases, no form of warning will remain on your Employee file indefinitely.

Provided your performance and / or conduct improves and remains at an acceptable level, warnings will be disregarded as follows:

Verbal warnings - disregarded after a six-month period, unless the particular offence is repeated or relates to a rule, which can only be broken on isolated occasions.

Written warnings - disregarded after a twelve-month period, unless the misconduct is of a serious nature or relates to a rule, which can only be broken on isolated occasions.

Final written warnings - disregarded after a twelve-month period unless the misconduct is of a serious nature or relates to a rule, which can only be broken on isolated occasions.

3.2 GRIEVANCE POLICY & PROCEDURE

The main aim of the grievance procedure is to allow the clerk an immediate means by which a grievance relating to her/his work can be aired and resolved. Use of this procedure should avoid the unnecessary build up of stress, tension and aggravation by an employee nursing a grievance. Informal discussion can frequently resolve problems without the need for a written record.

If you do wish your grievance to be formally recorded and investigated please make this clear at the outset, by informing the Chairman in writing.

Rules And Procedures:

- Any grievance you may have, formal or informal, will be dealt with fairly and consistently.
- You will be invited in writing to attend a meeting to discuss your grievance.
- You have the right to be accompanied by a companion during your grievance / appeal meeting.
- You will receive written notification of the outcome of the Grievance meeting.
- You have the right to appeal if you feel the grievance has not been resolved to your satisfaction.
- You will be invited to attend an Appeal meeting in the event that you exercise your right to appeal.
- You will receive written notification of the final decision.

The Council Grievance Procedure

Informal Grievance

1. If you have an informal grievance you should raise the matter with the HR Representative.
2. If the HR Representative does not settle your grievance to your satisfaction then you must present a written formal grievance in-line with the Formal Grievance Procedure below.

Formal Grievance Panel

1. If you have a formal grievance you must inform the HR Representative of your grievance.
2. Your written grievance should fully explain the nature and extent of your grievance.
3. You will be invited to attend a Grievance Panel Meeting.
4. You have the right to be accompanied at this meeting by a single companion
5. Your companion will be permitted to confer with you and allowed to address the meeting but not to answer on your behalf.
6. You will have the opportunity to address the meeting, explaining your complaint and how you believe it should be settled.
7. We may need to adjourn the meeting to make further investigations, prior to a final decision.
8. You will receive a written response to your grievance normally within ten working days of the meeting
9. This will detail your right of appeal. If there is a delay in our response you will be notified when you can expect a response and an explanation for the delay.

The Council Grievance Appeal

1. If you are unhappy with the decision of the grievance panel meeting, you have the right of appeal.
2. If you wish to exercise this right you must do so, in writing, within 5 working days stating the grounds for your appeal to the Vice Chairman of the Council.
3. Your appeal will be heard by the Vice Chairman of the Council.
4. You have the right to be accompanied at any Appeal meeting by a single companion.
5. Your companion will be permitted to confer with you and allowed to address the meeting but not to answer on your behalf.
6. You will have the opportunity to address the Appeal meeting, explaining your reason for your appeal and how you believe it should be settled.
7. We may need to adjourn the Appeal meeting to make further investigations, prior to a decision on your grievance appeal.
8. You will receive a written response to your grievance appeal, normally within five working days, which will detail the final decision of your grievance appeal and confirm this is the final stage of the grievance appeals procedure. If there is a delay in our response you will be notified when you can expect a response and an explanation for the delay.

This is the final stage of the Grievance Procedure.

At every stage of the grievance procedure the Council will ensure that a record of the events and a copy of any documentation is placed on the Clerk's file; that any meetings are recorded and signed by the Employee.

3.3 APPRAISAL POLICY

The Appraisal Scheme is intended to be responsive to the Parish Council's business and clerk's development requirements.

The Scheme meets a number of needs, among which are:

- To enhance the understanding of the objectives of the Parish Council and the role of the clerk;
- To form part of the communication process between the clerk and the Parish council
- To update the clerk on their current performance;
- To identify any training/development needs.

The Appraisal Procedure

An appraisal of the clerk will be carried out annually, in or as near to the annual date of commencement. The appraisal will be held in private and will be attended by the clerk, the clerk's line manager (Chairman) and another Councillor who is a member of the HR panel.

The chairman ensures all sections of the Performance Appraisal Form (Appendix B) are relevant to the appraisee and provides the appraisee with a copy of Part A of the Form for self-completion.

The appraisee is advised of the date for the completed form to be returned to the appraiser (a period of at least 10 working days will be given for its completion and return) and a mutually convenient date and time for the appraisal meeting is agreed.

The appraiser refers to any notes kept throughout the year and undertakes their own provisional assessment, using Part B of the Performance Appraisal Form giving measured and considered views of the appraisee's performance in respect of the appraisee's preceding year's work.

The Appraiser approaches all Councillors for any comments to feed into the appraisal process.

The appraisal meeting comprises discussion and agreement on:

- The contents of the two assessments;
- Councillors comments
- Future actions;
- Training needs;
- Improvement targets;
- Completion of specific tasks; and
- Objectives to be achieved during the next 12 months.

The appraiser summarises the appraisal and both parties sign and date the Summary performance Appraisal Form.

3 copies of the completed summary form are produced and distributed to:

- The appraisee;
- Their Personnel File;
- The Council

Persons Authorised to Conduct Appraisals

Any person authorised to conduct performance appraisals should:

- have had appropriate training or experience to undertake appraisals
- be in a position to personally monitor the appraisee's performance over the year and have access to any necessary information

The Right of Appeal

In the event that an appraisee wishes to dispute any point made in the completed performance appraisal, he or she must first inform the appraiser of the grounds on which the complaint is being made.

If an irreconcilable difference of opinions still exists, the appraisee must put this in writing and submit it to the HR panel who will arrange for it to be discussed as appropriate.

Disciplinary Situations

It is Staverton Parish Council Policy that an appraisal will NEVER be used as part of a disciplinary process.

If unsatisfactory performance has been previously identified, this should already have been broached at a separate disciplinary meeting.

3.4 INVESTIGATION PROCESS

The purpose of investigation

A preliminary investigation can help to gauge whether it is appropriate to embark on a formal disciplinary procedure or whether the matter is better resolved by informal means.

Failure to carry out a reasonable investigation before taking disciplinary action will normally render a resulting dismissal unfair.

The extent and nature of the investigation required will vary depending on the circumstances of each case and what is stated in your contractual documentation (i.e. contracts, employee handbooks). Some cases may call for an investigatory meeting with the employee to establish relevant facts. In other cases, the investigation may involve gathering and collating

documentary evidence. The extent of investigation required may also depend on whether or not the employee has admitted to the conduct in question.

It is important that investigations are conducted fairly, effectively and speedily.

It is also important that confidentiality is maintained and investigations are carried out as discreetly and sensitively as possible. It is essential that witnesses are identified and interviewed promptly and separately to refute any allegations of collusion and whilst matters are still fresh in their minds. If a statement is taken from the witness then you should make them aware that this will be given to the employee as evidence.

The employee should be made aware that the investigation is an impartial inquiry into the facts; the purpose is not to build a case against the employee but to search for evidence which supports or rebuts any allegations.

In some cases, such as potential gross misconduct, it would be advisable to suspend the employee pending a full investigation. This allows an unhindered investigation to take place. In addition, allowing the employee to continue working in such circumstances could be construed as demonstrating some tolerance of the alleged gross misconduct. However, employees should not be suspended at the drop of a hat. There should be some evidence to warrant the suspension in the first place and an initial explanation should normally be sought from the employee first (particularly in the case of longer serving employees of good record and where the allegations may damage the good name of the employee e.g. criminal activities or child abuse cases).

Wherever practicable a different person should carry out the investigation and the disciplinary hearing. This may not be practicable in small organisations or when dealing with a senior employee.

An investigatory interview is not a disciplinary hearing and therefore the employee has no *statutory* right to be accompanied. However, employees may have more comprehensive contractual rights.

-

Advance notice is not required by statute, although there may be contractual rights in this regard. Generally, however, the employee should simply be called in and the issues put to them so that the employer can assess their initial reaction and response before they had time

to invent excuses. They can then be challenged on disparities in the disciplinary hearing should this be necessary.

The interview

-

- The employee should be made aware that this is merely an investigatory 'fact-finding meeting' and not a disciplinary hearing at this stage.
- The employee should be made aware of the exact allegations against them and allowed an opportunity to respond to enable the investigator to form a view as to whether or not there may be a case to answer.
- Any witnesses interviewed should be made aware that this is an investigatory process only and that confidentiality is required. It is important to remind all staff involved that at this stage no judgements or decisions have been made.
- Depending on the circumstances, a written record may be advisable.
- Good questioning technique is important, use open questions - phrased *who, what, when where, why, or how*, and use open-ended language such as *'Tell me what you saw.....'*
- Avoiding leading questions and multiple questions.
- Closed questions that prompt yes/no answers are useful to establish facts, to clarify information and to control the conversation. For example, 'Did you...?', 'Do you....?'
- Ask questions that are designed to elicit facts/information and not so that allegations can be proved.

The investigator may also need to:

- Prepare a report outlining findings. This should include a schedule of people interviewed, dates, times, copies of notes, evidence gathered, and as an objective account of the investigation as possible.
- Make a recommendation to the HR Panel who will decide on and proceed with the next course of action. Normally there are 3 possibilities:
 - there is a case to answer via the formal disciplinary procedure, in which case the employee should be given notice to attend a formal disciplinary hearing
 - there is no case to answer, in which case the employee should be informed that the matter is closed and no disciplinary action is to be taken.
 - there are issues of concern that are best addressed informally with the employee