

# DISCIPLINARY PROCEDURE

## Little Ellingham Parish Council

### 1 Foreword

1.1 This procedure is prepared in accordance with the dismissal and dispute procedures as set out in the Employment Act 2008 and the ACAS Code of Practice APR 2009.

### 2 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 or her and will be given the opportunity to state his or 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.
- The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

### 3 Misconduct

3.1 This policy indicates the disciplinary procedure that will normally be followed in the event of misconduct. The following list provides examples of conduct that will normally be regarded as misconduct leading to disciplinary proceedings. The list is not exhaustive. These are examples only:

- Unsatisfactory time keeping
- Absenteeism
- Failure to comply with rules and regulations applicable to job requirements
- Failure by an employee to perform the duties and responsibilities of his or her post to the standard expected by the council
- Insubordination

3.2 Minor misconduct will be dealt with informally, usually in a confidential one to one meeting between the Chairman and the employee before implementing a formal disciplinary procedure.

### 4 Verbal warnings

4.1 Verbal Warnings are issued for most first instances of general misconduct, depending on the seriousness of the offence. If the employee is given a Verbal Warning, he or she will be warned of the likely consequences of any further disciplinary offences or a failure to improve his or her conduct to the satisfaction of council. A note confirming the Verbal Warning will be placed on the employees personnel file and a copy will be provided to the employee. A Verbal Warning will normally remain in force for 6 months. The Verbal Warning stage of the procedure may be omitted if the offence is of a sufficiently serious nature.

### 5 First written warning

- 5.1 In the case of a 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 Chairman and will set out:
- The nature of the offence and 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 more serious disciplinary action
  - The employee's right of appeal.
- 5.2 A First Written Warning will normally remain in force for 6 months. The First Written Warning stage of the procedure may be omitted if the offence is of a sufficiently serious nature.

## **6 Final written warning**

- 6.1 If further misconduct occurs within the time period specified in a First Written Warning, or if the misconduct is sufficiently serious, the employee will be given a Final Written Warning. A Final Written Warning will be issued by the Chairman and will set out:
- The nature of the offence and 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 more serious disciplinary action up to and including dismissal; and
  - The employee's right of appeal
- 6.2 Final Written Warnings may also be issued in circumstances where the misconduct does not amount to gross misconduct but is sufficiently serious to warrant only one written warning. A Final Written Warning will normally remain in force for 12 months.

## **7 Standard Council Disciplinary Procedure**

- 7.1 In the case of further misconduct within the time period specified in any Final Written Warning or if the misconduct is sufficiently serious and the Council deems it to be appropriate to contemplate the dismissal, demotion or suspension (without pay) of the employee the following formal disciplinary procedure will be followed.
- 7.2 The Council will investigate the alleged misconduct and will establish the facts surrounding the complaint as necessary, taking into account the statements of any available witnesses.
- 7.3 The Council will set out in writing the alleged conduct or other circumstances which lead it to contemplate dismissing the employee or taking disciplinary action against the employee and the basis for the allegation and will send the employee a copy of the statement inviting the employee to attend a disciplinary meeting to discuss the matter. The employee will be provided with a reasonable opportunity to consider his or her response to the information provided in the statement before attending the meeting. The employee must take all reasonable steps to attend the meeting.
- 7.4 Disciplinary meetings will normally be convened within 5 working days of the Council sending the employee the written statement referred to in 7.3 above. The employee may be accompanied to any disciplinary meeting by a fellow employee or by a representative of a trade union. The Council will be represented by the Chairman and two councillors.
- 7.5 If the time or date proposed for the meeting is inconvenient (either for the employee or for the employee's companion should he or she wish to be accompanied to the meeting pursuant to 7.4 above) the employee may ask to postpone the meeting by up to 5 working days.

- 7.6 The meeting may be adjourned to allow matters raised during the course of the meeting to be investigated, or to afford the Council time to consider its decision.
- 7.7 After the meeting the Chairman will inform the employee of the decision and any applicable sanction within 5 working days. The meeting may be reconvened for this purpose. The decision will be confirmed to the employee in writing.
- 7.8 If the employee wishes to appeal against the decision he or she must notify the Chairman in writing within 5 working days of receiving written notice of the decision. The Chairman will nominate a person or persons (eg the Vice-Chairman and a Councillor who were not involved in the original decision, to consider the appeal within 14 days of the decision at the previous stage and to set up an Appeal meeting.
- 7.9 The employee must take all reasonable steps to attend that Appeal meeting. The employee has the right to be accompanied to a disciplinary Appeal meeting by a ~~fellow employee~~ companion or by a representative of a trade union.
- 7.10 An Appeal meeting will normally be convened within 7 working days of the Appeal Chairman receiving notification that the employee wishes to appeal pursuant to 7.8 above. If the meeting date is inconvenient for the employee or the employee's companion he or she may ask to postpone the meeting by up to 5 working days.

At the appeal meeting:

- Any new evidence that the employee wishes to put forward will be considered, as will any new evidence from the Council. The original disciplinary penalty will be reviewed
  - The disciplinary appeal sanction originally imposed cannot be increased upon appeal
  - The Appeal meeting will not necessarily take place before any original disciplinary sanction imposed takes effect.
  - If the employee's appeal is against dismissal and the appeal is successful the employee will be reinstated and continuity of employment will be preserved
  - The meeting may be adjourned to allow matters raised during the course of the meeting to be investigated, or to afford the Council time to reconsider its original decision.
- 7.11 After the meeting, the Appeal Chairman will inform the employee of its final decision within 5 working days. The meeting may be reconvened for this purpose. The decision will be confirmed to the employee in writing.

## **8 Council dismissal procedure for use in gross misconduct**

- 8.1 The following list provides examples of conduct that will normally be regarded by the council as Gross Misconduct. This list is not exhaustive. These are examples only:
- Refusal or repeated failure by an employee to carry out his or her duties
  - Falsification of documents or information (including expense claims)
  - Unauthorised disclosure of confidential information
  - Assaulting a fellow employee or any other person whilst acting or purporting to act on behalf of the council
  - Insulting, indecent or offensive behaviour towards a fellow employee or any other person whilst acting or purporting to act on behalf of the council
  - Serious or repeated harassment (including sexual and racial harassment)
  - Incapacity at work due to the influence of alcohol, un-prescribed drugs or any other substance
  - Wilful damage to council property
  - Theft, unauthorised use or possession of council property or theft of the property of a fellow employee
  - Conduct bringing the council into disrepute

- 8.2 If an employee is accused of any Gross Misconduct he or she may be suspended from work on full pay pending the outcome of an investigation into the alleged offence(s). Such a period of suspension will not normally exceed 10 working days unless there are exceptional circumstances.
- 8.3 The Council will investigate the matter and will establish the facts surrounding the complaint as necessary, taking into account the statements of any available witnesses. As part of that investigation the employee will be interviewed.
- 8.4 If the Council believes the employee is guilty of gross misconduct his or her employment will be terminated summarily without notice or pay in lieu of notice.
- 8.5 The Council will send the employee a statement, setting out the allegations of misconduct that led to the employee's dismissal and the Council's basis for thinking that the employee is guilty of that misconduct. The date on which the employment terminated will be confirmed to the employee and the employee may be reminded of any continuing obligations he or she may have following the termination of employment. This statement will also explain the employee's right to appeal against the Council's decision.
- 8.6 If the employee wishes to appeal against the Council's decision he or she must notify the Chairman in writing within 5 working days of receiving notice of the Council's decision pursuant to 8.5 above. The Chairman will nominate a person or persons (eg the Vice-Chairman and at least two other Councillors) who were not involved in the original decision to consider the appeal within 14 days of the decision at the previous stage and to set up an Appeal meeting.
- 8.7 If the employee appeals the Appeal Chairman will invite the employee to attend an Appeal meeting. The employee must take all reasonable steps to attend the meeting. The employee has the right to be accompanied to a disciplinary Appeal meeting by a ~~fellow employee~~ companion or by a representative of a trade union.
- 8.8 Any Appeal meeting will normally be convened within 7 working days of the Appeal Chairman receiving notice from the employee that he or she wishes to appeal pursuant to 6.6 above. If the date of the meeting is inconvenient for the employee or his or her companion the employee may ask to postpone the meeting by up to 5 working days.
- Any new evidence that the employee wishes to put forward will be considered, as will any new evidence from the Council. The original disciplinary penalty will be reviewed
  - The disciplinary appeal sanction originally imposed cannot be increased upon appeal
  - The Appeal meeting will not necessarily take place before any original disciplinary sanction imposed takes effect. If the employee's appeal is against dismissal and the appeal is successful the employee will be reinstated and continuity of employment will be preserved
  - The meeting may be adjourned to allow matters raised during the course of the meeting to be investigated, or to afford the Council time to reconsider its original decision.
- 8.9 After the Appeal meeting the employee will be informed of the final decision within 5 working days. The meeting may be reconvened for this purpose. The appeal decision will be confirmed to the employee in writing.