Calstock Parish Council
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Disciplinary Procedure

Calstock Parish Council – Statement of Intent

This procedure sets out the framework for resolving issues relating to misconduct. It 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 Right Act 1996, Human Rights Act 1998 and the ACAS Codes of Practice on Disciplinary unsatisfactory performance.

In circumstances where poor performance is caused by an employee's lack of capability this procedure will not apply.

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1. Introduction

This procedure sets out the framework for resolving issues relating to misconduct. It 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 Right Act 1996, Human Rights Act 1998 and the ACAS Codes of Practice on Disciplinary unsatisfactory performance.

This procedure will apply to all employees who are under the National Joint Council for Local Government (Green Book) Terms and Conditions of Service.

2. Disciplinary Rules

It is difficult to define all the acts of misconduct which may lead to disciplinary action. As a general principle a test of reasonableness would be applied; would a reasonable person 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 time-keeping/attendance
- Unauthorised absence from work
- Inappropriate behaviour
- Waste, loss or damage of Council property through failure to take due care
- Negligence or failure in performance of duty and refusal to follow reasonable instructions or insubordination
- Breach of health and safety rules and other council policies (e.g. Data Protection, Equality and Diversity etc)
- Inappropriate use or unauthorised use of e-mail, IT, internet or telephone facilities
- Inappropriate use of social media as defined in the Social Media Policy
- Being under the influence of alcohol or drugs whilst at work
- Unauthorised action on behalf of the Council.

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.

Again, the list gives examples of matters likely to be regarded as gross misconduct and is not exhaustive.

- Refusing to follow reasonable management instructions, insubordination
- Theft from the Council, Councillors, staff 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

3. 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 their manager. However, where there has been a very serious first-time 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 them and will be given the opportunity to state their 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 must be given at least 5 working days' notice 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 behaviour of the employee concerned, the consequence to the assembly of the offence and any explanation presented by the employee.

Employees have the right to appeal against written warnings and dismissals.

4. Related Procedures

When using the procedure, it is necessary to refer to:

- The Grievance Procedure
- Other conditions set out in the Staff Handbook based in the office which lists the policies and procedures for the employee

5. Roles and Responsibilities

Where minor disciplinary issues arise it will normally be the Chair or agreed representative of the Personnel Committee who deals with any investigation and subsequent disciplinary meeting.

Situations 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 of the Personnel Committee or in their absence their representative who will then be responsible for nominating an Investigating Officer.

The Officer who carries out an investigation should not be involved in any subsequent decision to act under the procedure. Likewise, the Officer 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 of the Personnel Committee or their representative are authorised to give verbal warnings for instances of minor misconduct. The Chair or their representative are authorised to give written warnings and should normally take advice from ACAS or a reputable Human Resources company. In more serious cases of misconduct the Chair or their representative are authorised to suspend an employee whilst complaints are investigated and where there are sufficient grounds, they are authorised to dismiss an employee following a disciplinary meeting.

6. 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 staff 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

7. Informal Advice and Guidance

Where a minor breach of acceptable/established standards of conduct occurs, which does not justify formal disciplinary action, the Chair of the Personnel Committee 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 additional training to achieve the necessary standards. Representation will not normally be appropriate Line Managers or an agreed Personnel Committee Member 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.

However, the formal procedure will apply when:

- Previous informal advice or warnings have proved ineffective
- The allegation is of a serious nature
- A number of minor allegations are made which taken together constitute a serious breach of discipline

The Formal Procedure

8. Investigation

Before any decision can be made about whether or not a disciplinary hearing is necessary, an investigation must take place. The Chair of Personnel or in their absence their representative should appoint an investigating officer 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. If it is necessary, an Investigatory Interview should be

held whereby the employee is given 5 working days' notice, in writing, outlining the general 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.

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 of any likely delay.

Once the Investigating Officer has gathered all the relevant facts and reviewed the evidence, a report should be drafted to the Chair of the Personnel Committee or in their absence their representative recommending whether to:

- Take no further action and that the employee is informed accordingly
- Advise for the arrangement of counselling, training, extra supervision or written advice as appropriate
- Arrange a disciplinary hearing
- Suspend the employee pending the disciplinary hearing

The Chair of Personnel will be responsible for keeping the Chair of the Parish Council notified throughout the process when there is a disciplinary panel.

9. Suspension

In some circumstances the Chair of the Personnel Committee (or, in their absence, their representative) may consider suspension, on full pay, pending further investigation or until the disciplinary hearing takes place. Suspension may be appropriate where: cases potentially involve 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 10 working days, however where necessary this period can be extended.

10. Arranging a Hearing

If following the recommendations of the Investigating Officer the Chair of the Personnel Committee (or their representative) concludes that a hearing is required then the necessary arrangements should be made by the Investigating Officer. The employee should be given at least 5 working days' notice in writing. The letter should include a clear written statement of the allegation along with any related paperwork 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 witness that they may wish to call. Details of any witnesses the employee intends to call or documents that

the employee may wish to refer to at the hearing must be submitted to the Investigating Officer at least 3 working days prior to the hearing.

11. Conducting a hearing

The Panel for a hearing would normally be facilitated by the Chair of the Personnel Committee or, in their absence, their representative, excluding the Investigating Officer. The council reserves the right to use the services of an External Human Resources Company to assist in the process and said company may attend the hearing.

The objective is:

- To hear the evidence in respect of the allegation and decide whether the allegation is substantiated or not.
- And, if the allegation is substantiated, determine the disciplinary sanction to be taken considering the seriousness of the offence and having regard to previous relevant disciplinary history.

The accepted format is:

- introduce Panel members and specify their roles including an independent clerk,
- clarify the purpose of the hearing and state the allegation,
- presentation of the case by the investigating officer with witness 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 form investigating officer,
- questions from panel,
- investigating officer to sum up,
- employee/representative to sum up,
- adjournment,
- The panel adjourn to make their decision,
- hearing reconvened and the employee/representative informed of the decision and their rights of appeal.

During the hearing requests for an adjournment can be made at any stage and it is up to the Chair to decide if it would be appropriate.

The decision of the Panel must be conveyed to the employee in writing within 5 working days. The letter should clearly set out:

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

12. 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 mitigating circumstances.

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

Stage 1: Oral Warning
For a minor offence or offences, a formal verbal warning 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 Written 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 with notice
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.

13. 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. In certain circumstances the warning may be for a shorter period.

14. The Right of Appeal

An employee has the right to appeal against disciplinary action resulting in a final written warning or their dismissal. A panel of three Councillors will hear the appeal, providing that they have had no previous involvement in the matter.

An employee who wishes to appeal must do so in writing to the Chair of the Personnel Committee. This must be done within 10 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

15. Arranging an Appeal

The date and time of the appeal will be organised by the Chair of the Personnel Committee or in their absence their representative. 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 five days prior to the hearing.

16. Conducting an Appeal Hearing

The objective is:

- To re-hear the evidence in respect of the disciplinary action and decide whether that action is warranted or not.
- if action is not warranted, to determine what action if any is necessary

In doing so the Appeal Panel will have regard to seriousness of the offence and any previous relevant disciplinary history.

The accepted format is:

- 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 Chair of the previous hearing and witnesses;
- the appellant puts their case including calling any witnesses;
- the Chair of the previous hearing can ask questions of the appellant and witnesses

- the Appeals Panel can ask questions of both parties; both parties can sum up should they wish to do so. No additional 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 Panel to reach a decision;

- the appeal is reconvened and both parties are informed of the decision;

- the Appeals Panel write to both parties informing them of their decision within 5 working days.

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

17. 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.

18. Training

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