

TADDINGTON PARISH COUNCIL

DISCIPLINARY POLICY

Introduction

- 1 This policy is based on and complies with the 2015 ACAS Code of Practice <http://www.acas.org.uk/index.aspx?articleid=2174>. It also takes account of the ACAS guide on discipline and grievances at work https://www.acas.org.uk/media/1043/Discipline-and-grievances-at-work-The-Acas-guide/pdf/DG_Guide_Feb_2019.pdf. It 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 that:
 - the Council will fully investigate the facts of each case
 - the Council recognises that misconduct and unsatisfactory work performance are different issues. This disciplinary policy will only be used in respect of the latter when performance-improvement management has proved ineffective.
 - employees will be informed in writing about the nature of the complaint against them and given the opportunity to state their case
 - employees may be accompanied or represented by a trade union representative or a work colleague at any disciplinary or investigatory 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. The 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.
 - 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 current data-protection legislation.
 - recordings of the proceedings at any stage of the disciplinary procedure are prohibited, unless agreed as a reasonable adjustment that takes account of an employee's medical condition
 - employees have the right to appeal against any disciplinary action.
 - if an employee who is already subject to the Council's disciplinary procedure raises a grievance, the grievance will normally be heard after the completion of the disciplinary procedure
 - disciplinary action taken by the Council can include an oral warning, written warning, final written warning or dismissal
 - 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 Council's and the employee's consent.

Examples of misconduct

- 4 Misconduct is employee behaviour that can lead to the employer taking disciplinary action. The following list contains some examples of misconduct.

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

Examples of gross misconduct

- 5 Gross misconduct is misconduct that is so serious that it is likely to lead to dismissal without notice. The following list contains some examples of gross misconduct.
- bullying, discrimination and harassment
 - incapacity at work because of alcohol or drugs
 - violent behaviour
 - fraud or theft
 - gross negligence
 - gross insubordination
 - serious breaches of health & safety rules
 - serious and deliberate damage to property
 - use of the internet or email to access pornographic, obscene or offensive material
 - disclosure of confidential information.

Examples of unsatisfactory work performance

- inadequate application of office procedures
- unsatisfactory management of staff

Disciplinary investigation

6. There will be an investigation of the facts; the council's HR committee may appoint an investigator who will be responsible for undertaking this investigation. This investigator will be independent from the matter being investigated and will usually be a councillor; the investigator may be someone from outside the Council - a councillor from a neighbouring council, for example. No councillor with direct involvement in the matter shall be appointed as investigator. The investigator, if there is one, will be appointed promptly and will be asked to submit a report within 20 working days of appointment. However, in some cases, the appointment of an investigator may not be necessary and the HR committee may decide to commence disciplinary proceedings at the next stage (see paragraph 14).
- 7 The HR committee will notify the employee in writing of the alleged misconduct and ask him/her to attend a meeting with the investigator. The employee will be given at least five working days' notice of the meeting with the investigator so that he/she has reasonable time to prepare for it. The letter will explain the investigatory process and that the meeting is part of that process. The employee will be provided with a copy of the Council's disciplinary procedure, and be informed that, when meeting with the investigator, he/she will have the opportunity to comment on the allegations of misconduct.
- 8 Employees may be accompanied or represented by a trade union representative or a work colleague at any investigatory meeting.
- 9 If there are other persons (eg employees, councillors, members of the public or the Council's contractors) who can provide relevant information, the investigator should try to obtain it from them in advance of the meeting with the employee.
- 10 The investigator has no authority to take disciplinary action. His/her role is to establish the facts of the case as quickly as possible and prepare a report to the HR committee.
- 11 The investigator's report will contain his/her recommendations, and the findings on which they are based. He/she will recommend either:
- the employee has no case to answer and there should be no further action under the Council's disciplinary procedure, or
 - the matter is not serious enough to justify further use of the disciplinary procedure and can be dealt with informally, or
 - the employee has a case to answer and there should be action under the Council's disciplinary procedure.
- 12 On receipt of the Investigator's report, the HR committee will decide whether further action will be taken.
- 13 If it is decided not to take disciplinary action, it may be considered whether mediation would be appropriate in the circumstances.

The disciplinary meeting

- 14 If the HR committee decides that there is a case to answer, it will appoint a panel of 2 (or 3) councillors. The investigator shall not sit on the panel (though he/she may be present). 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 to the employee will confirm the following:
- the names of the panel and of its Chair
 - details of the alleged misconduct, its possible consequences and the employee's statutory right to be accompanied at the meeting
 - a copy of the investigation report, all 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 (at least 15 working days) so that he /she has sufficient time to prepare for it
 - 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 5 working days before the meeting
 - that the employee and the Council will provide each other with all supporting evidence at least five working days before the meeting. If witnesses are not attending the meeting, witness statements will be submitted to the other side at least five working days before the meeting
 - that the employee may be accompanied by a companion, either a trade union representative or a work colleague
- 15 The disciplinary meeting will be conducted as follows:
- the Chair will introduce the members of the panel to the employee
 - the investigator will present the findings of the investigation report
 - the Chair will set out the council's case and present supporting evidence (including any witnesses)
 - the employee (or the companion) will set out his/her case and present evidence (including any witnesses)
 - any member of the panel and the employee (or the companion) may question the investigator and any witness
 - the employee (or the companion) will have the opportunity to sum up his/her case
- The disciplinary meeting may be adjourned to allow matters that were raised during the meeting to be investigated by the panel.
- The Chair will provide the employee with the panel's decision with reasons, in writing, within 5 working days of the meeting, and notify the employee of their right to appeal against the decision.

Disciplinary action

- 16 If the panel decides that there should be disciplinary action, it may be any of the following:
- a) **Oral warning**
- An oral warning is issued for most first instances of minor misconduct. The panel will notify the employee:
- of the reason for the 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
 - that a note confirming the oral 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 six months.
- b) **Written warning**
- If there is a repetition of earlier misconduct which resulted in an oral warning, or for different and more serious misconduct, the employee will normally be given a written warning. A 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
 - 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 12 months.
- c) **Final written warning**
- If there is further misconduct during the period of a written warning or if the misconduct is sufficiently serious, 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
- 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 18 months.

d) **Dismissal**

The panel 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.

17 The panel 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.

18 If the panel decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file. Any action imposed as a result of the disciplinary meeting will remain in force unless and until it is modified as a result of an appeal.

The appeal

19 An employee who is the subject of disciplinary action will be notified that any appeal must be received in writing by the Chair of the HR committee within 5 working days of the employee receiving written notice of the disciplinary action and must specify the grounds for appeal.

20 The grounds for appeal include;

- a failure by the Council to follow its disciplinary policy
- the panel's 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.

21. The appeal will be heard by an appeal panel of 2 (or 3) councillors who have not previously been involved in the case; this panel may or may not include members of the HR committee.

22 The employee will be notified, in writing, within 10 working days of 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, either a trade union representative or a work colleague.

23 At the appeal meeting, the Chair of the appeal panel 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 decision of the original panel
- explain the action that the appeal panel may take.

24 The employee (or his/her companion) will be asked to explain the grounds for appeal.

25 The Chair will inform the employee that he/she will receive the decision and the panel's reasons, in writing, within five working days of the appeal hearing.

26 The appeal panel may decide to uphold the decision of the original panel, substitute a less serious sanction or decide that no disciplinary action is necessary. If it decides the latter, no record of the matter will be retained on the employee's personnel file.

27 If an appeal against dismissal is upheld, the employee will be paid in full for the period from the date of dismissal and continuity of service will be preserved.

28 The appeal panel's decision is final.

This policy was adopted by the Parish Council at its meeting on 10 November 2020.