

# **STANWICK PARISH COUNCIL**

## **DISCIPLINARY AND DISMISSAL PROCEDURE**

This procedure is designed to help and encourage all council employees to achieve and maintain high standards of conduct whilst at work or representing the council. The aim is to ensure consistent and fair treatment for all. This procedure is prepared in accordance with the dismissal and dispute resolution procedures as set out in the Employment Act 2008 and the ACAS Code of Practice 2015.

This policy sets out the formal internal process for matters relating to Disciplinary and Dismissal Procedures.

It is the intention of the Council that a full internal and if possible, a conciliation process, will take place to reconcile issues.

The Council recognises that the employee has certain rights, namely,

- That there must be a clear reason for dismissal related to the employees conduct.
- That the Council must act reasonably and fairly in treating this as a sufficient reason to dismiss the employee.
- That at all formal stages of the process the employee is entitled to be accompanied by a union representative or other appropriate person.
- That no employee shall be victimised as a result of acting as a representative of the person before the disciplinary hearing.
- The Council will postpone the hearing for up to five working days after the hearing was called for if the chosen representative is not available.
- The representative may ask questions of the hearing panel and speak on behalf of the employee brought before the panel, but may not answer questions put to the employee.

The Council will observe the following framework for all disciplinary and dismissal proceedings.

- The employee must be fully informed of the matter in writing that is considered to warrant a disciplinary hearing.
- The matter must be investigated fully and thoroughly by an unbiased investigator competent in such work, whose report must be sent to both parties in the matter for consideration before further proceedings.
- The employee must be given reasonable time to prepare a defence (5-7 days)
- The precise allegations should be read out at the start of the hearing

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- The employee must be given adequate time to answer the allegations.
- The employees' representation should be in possession of all the documentation that has been given to the employee.
- The employee (or representative) should be allowed to challenge any matters that will be used by the Council to make their decision.
- The panel hearing the matter must keep an open mind and not prejudge the matter.
- There must be the opportunity for the employee to appeal any decision to a non-involved third party.
- Wherever possible the panel hearing the matter should have a gender and racial balance of members.
- If as a result of disciplinary hearing an employee decides to bring a grievance about the conduct of the person handling the disciplinary matter, they are entitled to do so.

### **THE PROCEDURE FOR MISCONDUCT and GROSS MISCONDUCT**

The following list provides examples of misconduct which will normally give rise to formal disciplinary action:

- Unauthorised absence from work
- Persistent short-term and/or frequent absences from work without a medical reason
- Lateness for work or poor time keeping
- Inappropriate standard of dress
- Minor breaches of Health and Safety or other rules or procedures
- Failure to perform your job to the standard expected or in line with your job description/objectives
- Time wasting
- Disruptive behaviour
- Misuse of the council's facilities (e.g. telephones, computers, email or the internet)
- Refusal to carry out reasonable requests or instructions
- Smoking in unauthorised areas
- Failure to follow an agreed council procedure

This list is not exhaustive and offences of a similar nature will result in disciplinary action being instigated N.B. persistent or frequent absence on medical grounds and long term sickness absence will be dealt with using a procedure for Incapacity,

The following list provides examples of offences which are normally regarded as **gross misconduct**:

- Theft, fraud, deliberate falsification of records, or other acts of dishonesty
- Fighting, assault on another person
- Deliberate damage to property of the council, its workers or members
- Gross incompetence in the conduct of work

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- Gross negligence which results in the council or employees being put at risk.
- Being under the influence of illegal drugs or excessive alcohol
- Acts of incitement towards or actual acts of discrimination, harassment or victimisation including on the grounds of sex, race, colour, ethnic origin, disability, sexual orientation, age, religion or belief
- Serious acts of insubordination
- Serious breach of duty to keep information of the council, its service providers and its clients confidential
- Unauthorised entry to computer records
- Serious breach of the council's Security Policy, Health & Safety Policy, Confidentiality or email and Internet Policy
- Any action, whether committed on or off the premises, that is likely to or does bring the council into disrepute
- Serious negligence which causes or might causes significant loss, damage or injury
- Accepting bribes or incentive payments from suppliers
- Unauthorised use of council's funds or credit
- Working with an external agency to provide information which would be detrimental to and cause commercial risk to the council.
  
- This list is not exhaustive and other offences of a similar gravity will result in disciplinary action being instigated at Gross Misconduct level which carries a potential penalty of dismissal. Gross Misconduct is generally any conduct which places extreme pressure on the mutual trust which exists in an employment relationship.

### **INFORMAL ACTION**

Minor misconduct will be dealt with informally usually in a confidential one-to-one meeting between the employee and Chairman. In the case of the Clerk being the individual against whom there is a complaint or allegation the matter should be handled discreetly involve an informal meeting initially.

### **FORMAL ACTION**

The level of warning you may receive for misconduct/gross misconduct will depend on how serious the council considers the alleged actions to be and your previous conduct in all the circumstances.

#### Disciplinary Letters

If there is a concern about an employee's conduct or behaviour then a letter will be given to the employee advising him/her of the allegation(s) and reasons why this is unacceptable. The letter should invite the employee to attend a meeting at which the alleged misconduct will be discussed and will inform the employee of their right to be accompanied to the meeting. The letter will specify at which stage the disciplinary procedure is being invoked and if invoked for Gross Misconduct the letter will warn that a potential outcome could be dismissal. The time, date and venue of the meeting will also be advised. Any documents to be produced at the meeting will also be provided.

#### Disciplinary Meetings

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The time and location of a disciplinary meeting should be agreed with the employee and it should be held in a private location with no interruptions. This will normally be without undue delay but allowing the employee to prepare their case e.g. within 5 days of the letter being sent, where practically possible. At the meeting the manager (or in the case of the Clerk being disciplined, the Chair of the hearing panel) will state the complaint against the employee and go through the evidence which has been gathered.

The employee will also be allowed to ask questions, present evidence and call witnesses if advance notice has been given that they will do so.

If the employee is unable to attend the meeting due to unforeseeable reasons out of their control (e.g. illness) then the council will reasonably rearrange the meeting. However, if the employee fails to attend the meeting without good reason the meeting can be held in the employee's absence.

### **DISCIPLINARY HEARING AND APPEALS PANELS**

To ensure fairness the Council will form a separate Grievance and Discipline Panel and an Appeals Panel. Members of the Appeals Panel should not be contaminated by being part of the proceedings of the Grievance and Discipline Panel. As far as reasonably practical, the Appeals Panel should be represented by a more senior councillor than attended the first meeting.

As the total membership of the council is seven, the Council may consider inviting an independent member from a neighbouring local council to sit on the panel to ensure a fair and reasonable decision is made.

### **STATUTORY DISMISSAL AND DISCIPLINARY PROCEDURES**

The Standard Dismissal and Disciplinary Procedure will normally apply where the Council wishes to dismiss an employee (on grounds of capability, conduct, redundancy, expiry of fixed term contract or retirement); or take other action against him/her on grounds of conduct or capability as required by the Employment Act 2002 – Dispute Resolution Regulations 2004.

*Step 1. Statement of grounds for action and invitation to meeting.*

The Council must set out in writing the employee's alleged conduct, characteristics or other circumstances, which have led them to contemplate disciplinary action or dismissal.

The Council must send the statement or a copy of it to the employees and invite the employee to a meeting to discuss the matter/s.

*Step 2. The meeting*

The meeting must be held before any action is taken by the employer, unless the disciplinary action consists of suspension.

The meeting must not take place unless:

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- a) The Council has informed the employee of the grounds for the allegations as set out in the statement under step 1; and
- b) The employee has been given a reasonable opportunity to consider their response to that information.

The employee must take all reasonable steps to attend the meeting.

After the meeting, the Council must inform the employee of their decision and notify the employee of the right to appeal against the decision if he or she is not satisfied.

### *Step 3. Appeal*

If the employee wishes to appeal, they must inform the Council.

If the employee informs the Council of their wish to appeal, the Council must invite the employee to attend a further meeting.

The employee must take all reasonable steps to attend the meeting.

After the appeal meeting the Council must inform the employee of their final decision.

## **MODIFIED DISMISSAL AND DISCIPLINARY PROCEDURES**

A modified procedure is available for use in cases of instant, or near instant, summary dismissal as a result of extreme cases of gross misconduct, such as violence or serious criminal offences that require an urgent response.

### *Step 1.*

The Council will inform the ex-employee in writing details of the alleged misconduct that has led to his/her dismissal. What evidence there was for the decision to dismiss, and the right of appeal against the decision.

### *Step 2.*

If the ex-employee wishes to exercise his/her right of appeal then a meeting must be convened. The final decision must then be given and confirmed in writing.

## **PAPERWORK**

It is a requirement that all paperwork associated with the matter of a Disciplinary or Grievance hearing is kept under the confidential information classes of both the Data Protection Act 2018 and the Freedom of Information Act 2000.

Neither the public nor other members of the Council without a specific need to know have access to the information.

A copy of the record of the proceedings and the results must be given to the employee.

## **EXEMPTIONS TO THE STATUTORY PROCEDURE FOR DISMISSAL**

The statutory procedure shown above will not apply in the following situations.

1. Where the dismissal is in circumstances i.e. loss of a qualification to continue the job e.g. loss of a licence.
2. Where the Council ceases to exist abruptly
3. Long term illness.

## **OUTCOMES AND PENALTIES**

### **Stage 1 - Oral Warning**

In the instance of a first complaint that conduct does not meet acceptable standards, the employee will normally be given a formal ORAL WARNING. He or she will be advised of:

- the reason for the warning,
- that it is the first stage of the disciplinary procedure,
- the improvement that is required and the timescales for achieving this improvement,
- together with a review date and any support available (where applicable) and
- his or her right of appeal.

A brief note of the oral warning will be kept but it will be spent after 6 months, subject to satisfactory conduct.

### **Stage 2 - Written Warning**

If the offence is a serious one, or if further to previous formal disciplinary action, a WRITTEN WARNING will be given to the employee by the Chairman. This will give details of the complaint, the improvement required and the timescale. It will warn that action under Stage 3 will be considered if there is no satisfactory improvement and will advise of the right of appeal. A copy of this written warning will be kept on file but it will be disregarded for disciplinary purposes after 12 months subject to satisfactory conduct.

### **Stage 3 – Final Written Warning**

If there is still a failure to improve and conduct or performance is still unsatisfactory, or the misconduct is sufficiently serious, a FINAL WRITTEN WARNING will normally be given to the employee. This will give details of the complaint, will warn that dismissal will result if there is no satisfactory improvement and will advise of the right of appeal. A copy of this final written warning will be kept by the Chairman but it will be spent after 12 months (in exceptional cases the period may be longer) subject to satisfactory conduct.

### **Stage 4 – Dismissal or other sanctions**

If conduct is still unsatisfactory and the employee still fails to reach the prescribed standards, or where the Council reasonably believes Gross Misconduct has occurred, DISMISSAL may result. Only the appropriately convened hearing panel can take the decision to dismiss an employee. The employee will be given a written statement of allegations against him/her, invited to a meeting and then be notified in writing of the reasons for the decision taken at the hearing. Penalties at this stage may include dismissal with notice or summary dismissal (i.e. without any notice), Final Written

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Warning with/without demotion, loss of pay or loss of seniority. If dismissal is the outcome, the employee will be advised of the date on which employment will terminate.

In all cases the employee has a right of appeal.

Very exceptionally, if an offence of Gross Misconduct is extremely serious an employee can be dismissed immediately without a meeting. In this situation a letter setting out reasons for dismissal would be sent to the employee offering the opportunity for an appeal hearing.

### **SUSPENSION**

Where there is an accusation of an act of gross misconduct, the employee may be suspended from work on full pay while the council investigates the alleged offence. Only the appropriately convened committee has the power to suspend. This enables a swift and thorough investigation to occur. Whilst suspended pending disciplinary investigation regular contact with a nominated person at the council will be maintained although access to premises, equipment or systems may be denied.

The Investigator who compiles evidence for the disciplinary hearing must play no part in the subsequent decision making to ensure impartiality. The Council need to consider the implications of such arrangements on its hearing and appeal panel plans early on in the disciplinary process.

### **CRIMINAL CHARGES OR CONVICTIONS**

If an employee is charged with or convicted of a criminal offence this does not automatically give rise to a disciplinary situation. Consideration needs to be given to how a charge or conviction may affect an employee's ability to undertake his or her job duties and their relationships with the employer, colleagues, subordinates or customers.

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Policy based on ADVICE NOTE: Disciplinary Procedure Model © ALCC with permission of ALCC

Reference should be made to the ACAS Code of Practice at [www.acas.org.uk](http://www.acas.org.uk)