

TOLLESHUNT D'ARCY PARISH COUNCIL

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Disciplinary Procedure

Clerk: Michelle Curtis, 4 Valkyrie Close, Tollesbury, Maldon, Essex CM9 8SL
Tel: 07835 866239 e-mail: tdarcyclerk@gmail.com

DISCIPLINARY PROCEDURE

PURPOSE AND SCOPE

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 set out in the Employment Act 2008 and the ACAS Code of Practice APR 2009

PRINCIPLES

- a) No disciplinary action will be taken against an employee until the case has been fully investigated
- b) At every stage in the Procedure the employee will be advised of the nature of the complaint against him/her and will be given the opportunity to state his/her case before any decision is made.
- c) At all formal stages of the Disciplinary Procedure the employee will have the right to be accompanied by a Trade Union representative or work colleague. 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.
- d) An employee will have the right to appeal against any disciplinary penalty imposed.
- e) The Procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

THE PROCEDURE FOR MISCONDUCT AND GROSS MISCONDUCT

3.1.1 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 Certificate
- Lateness for work or poor time keeping
- Inappropriate standard of dress
- Minor breaches of Health and Safety or other Council Rules or Procedures
- Failure to perform the job to the standard expected or in line with the Job Description/Objectives
- Time wasting
- Disruptive behaviour
- Misuse of the Council's facilities (e.g. telephones, computers, email or 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, which is described in the Absence Policy.

3.1.2 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 or assault of another person
- Deliberate damage to Council property, its workers or members
- Gross incompetence in the work performance
- Gross negligence which results in the Council or employees being put at risk
- Being under the influence of illegal drugs or 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
- A serious breach of the duty to keep the information of the Council, its Service Providers and its Clients confidential
- Unauthorised entry into computer records
- Serious breaches of the Council's Security Policy, Health & Safety Policy, Confidentiality or E-mail 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 cause, significant loss, damage or injury
- Accepting bribes or incentive payments from Suppliers
- Unauthorised use of the Council's funds
- 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 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.

3.2 INFORMAL ACTION

Minor misconduct will be dealt with informally usually in a confidential one-to-one meeting between the employee and Line Manager. In the case of the Clerk being the individual against whom there is a complaint or allegation the matter will be handled discreetly by Members of the Personnel Committee and involve an Informal Meeting initially. However, where the matter is more serious or Informal Action has not brought about the necessary improvement the following Procedure will be used:

3.3 FORMAL ACTION

3.3.1 The level of warning he/she may receive for misconduct/gross misconduct will depend on how serious the Council considers the alleged actions to be and any previous conduct. In the event of alleged gross misconduct the formal process may commence at Stage 4 –see 3.4 below.

3.3.2 Disciplinary Letters

If there is a concern about an employee's conduct or behaviour a letter will be given to the employee advising him/her of the allegation(s) and reason(s) why this is unacceptable. The letter will invite the employee to attend a Meeting to discuss the alleged misconduct 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 (see the 4 stages below) and if invoked at Stage 4 for Gross Misconduct the letter will warn that the potential outcome could be dismissal. The time, date and venue of the Meeting will also be advised. Any documentation to be relied upon at the Meeting will also be provided.

3.3.3 Disciplinary Meetings

The time and location of a Disciplinary Meeting will be agreed with the employee and it will be held in a private location with no outside interruptions. This will normally be without undue delay whilst still allowing the employee time to prepare their case e.g. within 5 days of the letter being sent, where practicably possible. At the Meeting the Line-Manager (or in the case of the Clerk being disciplined, the Chairman of the Appeals 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 of this.

If the employee is unable to attend the Meeting due to unforeseen circumstances beyond their control (e.g. illness), the Council will rearrange the Meeting at an agreed time. However, if the employee fails to attend the Meeting without good reason, the Meeting could be held in their absence.

3.4 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/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 it, together with a review date and any support available (where applicable) and
- his/her Right of Appeal.

A brief note of the oral warning will be kept but it will be considered to 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 Line Manager. 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 about the Right of Appeal. A copy of this Final Written Warning will be kept by the Line Manager (or in the case of the Clerk being disciplined by the Chairman of the Appeals Panel) but it will be considered to 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 required standards, or where the Council reasonably believes Gross Misconduct has occurred, DISMISSAL may result. Only the appropriately convened Appeals 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 Disciplinary Hearing and then be notified in writing of the reasons for the decision taken at that Hearing. Penalties at this stage may include dismissal with notice or summary dismissal (without any notice), Final Written 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 their 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 Hearing. In this situation a letter setting out reasons for dismissal would be sent to the employee offering the opportunity for an Appeal Hearing.

3.5 SUSPENSION

If an employee is accused of an act of gross misconduct, they may be suspended from work on full pay whilst the Council investigates the alleged offence. Only the appropriately convened Appeals Panel 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 can be maintained, although access to premises, equipment or systems could be denied. The person who compiles evidence for the Disciplinary Hearing will play no part in the subsequent decision-making to ensure impartiality

3.6 APPEALS

The Appeals stage of the Disciplinary Process is part of the Code of Practice to which an employee has a right. It can be exercised after any of the stages of Disciplinary Action for Misconduct/Poor Performance or Gross Misconduct.

An employee who wishes to appeal against a Disciplinary Decision should inform the Chairman (or Chairman of the relevant Panel) within five working days, in writing and giving reasons for the Appeal. An Appeal may be raised if:

- The employee thinks the finding or penalty is unfair
- New evidence has come to light
- The employee thinks that the Procedure was not applied properly

Where possible the Appeal will be heard by a separate panel of Elected Members who have not been involved in the original Disciplinary Hearing, which will view the evidence with impartiality. The employee will have the right to be accompanied by a colleague or accredited Trade Union official or lay member at the Appeal Hearing. The outcome of the Appeal Hearing and reasons for its decision will be advised to the employee as soon as possible after the Appeal Hearing and be confirmed in writing. At the Appeal Hearing any disciplinary penalty imposed will be reviewed but it cannot be increased. The decision made at the Appeal Hearing will be final.

3.7 THE RIGHT TO BE ACCOMPANIED

At each formal stage of the Disciplinary Procedure an employee has the right to be accompanied and can make a reasonable request for such a person to accompany them. An employee can ask any other employee or a Trade Union representative or an appropriately accredited official employed by a Trade Union to accompany them, to give

support and help them prepare for the Disciplinary Procedure. This right is enshrined in the 1999 Employment Relations Act. As this is an internal process there is no provision to have any external person accompany or represent an employee e.g. partner, parent, solicitor etc. the person accompanying the employee can address the Hearing, put and sum up the employee’s case, respond on behalf of the employee to any views expressed at the Hearing and confer with the employee. They cannot answer questions on the employee’s behalf or address the Hearing if the employee does not wish him/her to or prevent the employee explaining their case.

3.8 HEARING PANELS

The Council will set up a Panel to hear Disciplinary and Grievance matters on an annual basis so that if a dispute does arise in the workplace the Elected Members involved will be already trained and briefed on their duties. Should one of these Panel Members be implicated in the dispute or have undertaken an investigatory role then they will be substituted as a Panel Member.

3.9 NOTE-TAKING

A note-taker will be provided at every Hearing which takes place as a result of a Disciplinary Procedure. Employment Tribunals are particularly keen to view contemporaneous notes of events which have led to an employment dispute, every effort will be made to respect employee confidentiality.

3.10 GRIEVANCES RAISED DURING DISCIPLINARY PROCEDURES

In some circumstances when a Disciplinary Procedure has commenced an employee may choose to exercise his/her right to raise an internal grievance about their employment relationship with the Council or individual Members. In this situation, in line with recommendations from SLCC and advice from ACAS, the Disciplinary Procedure will be placed on hold until the grievance has been aired and action towards a resolution has been progressed. In exceptional circumstances if it is pragmatic to deal with the two disputes concurrently specialist advice will be sought.

3.11 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 Procedure. Consideration will be given to how a charge or conviction may affect an employee’s ability to undertake his/her duties and their relationship with their employer, colleagues, subordinates or customers.

4. GETTING IT WRONG

The Council are aware that failure to follow the ACAS Code of Practice (available at www.acas.org.uk) can lead to an Employment Tribunal awarding an uplift of an award against them of up to 25%. Tribunals dealing with unfair dismissal claims are particularly interested in whether the employer followed a Disciplinary Procedure and whether the employer acted fairly and reasonably. The Council have an agreed Disciplinary Procedure which is communicated to Staff and Members, and is revisited and reviewed regularly.

Version	Details of Changes	Date	Approver
V1.0	Reviewed and Adopted	26/03/2019	TDPC
	Next Review March 2022		