



WOMBOURNE PARISH COUNCIL

Disciplinary Policy

Introduction

The purpose of this policy is 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

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 applies.

An employee will have the right to appeal against any disciplinary penalty imposed.

The procedure may be implemented at any stage of the employee's alleged misconduct warrants such action.

The procedure for misconduct and gross misconduct

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

- i. Unauthorised absence from work
- ii. Persistent short term and/or frequent absences from work without medical reason
- iii. Lateness for work or poor time keeping
- iv. Inappropriate standard of dress
- v. Minor breaches of Health and Safety or other rules or procedures
- vi. Failure to perform your job to the standard expected or in line with your job description/objectives within the agreed timescales
- vii. Time wasting
- viii. Disruptive behaviour
- ix. Misuse of the Council's facilities (e.g. telephones, computers, email or the internet)
- x. Refusal to carry out reasonable requests or instructions
- xi. Smoking in unauthorised areas
- xii. Failure to follow an agreed Council process

This list is not exhaustive and offences of a similar nature will result in disciplinary action being instigated. Persistent or frequent absence on medical grounds and long term sickness absence will be dealt with using the Absence Policy.

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

- i. Theft, fraud, deliberate falsification of records (e.g. claiming additional overtime or falsifying signing in times), or other acts of dishonesty
- ii. Fighting, assault on another person
- iii. Deliberate damage to property of the Council, its workers or Members
- iv. Gross incompetence in the conduct of work
- v. Gross negligence which results in the Council or employees being put at risk
- vi. Being under the influence of illegal drugs or alcohol whilst at work

- vii. 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
- viii. Serious acts of insubordination
- ix. Serious breach of duty to keep information of the Council, its service providers and its clients confidential
- x. Unauthorised entry to computer records or paper files
- xi. Serious breach of the Council's policies, for example, Health and Safety Policy
- xii. Any action, whether committed on or off the premises, that is likely to or does bring the Council into disrepute
- xiii. Serious negligence which causes or might cause significant loss, damage or injury
- xiv. Accepting bribes, incentive pays or tips from customers or suppliers
- xv. Unauthorised use of Council funds
- xvi. 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.

Informal action

Minor misconduct will be dealt with informally usually in a confidential one-to-one meeting between the employee and their line manager.

In the case of the Clerk being the individual against whom there is a complaint or allegation the matter should be handled by Members of the Staffing Committee, and involve an informal meeting.

However, where the matter is more serious or informal action had not brought about the necessary improvement, the following procedure will be used:

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. In the event of alleged Gross Misconduct the formal process may commence at dismissal or other sanctions.

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 or 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 (see the 4 stages below) and if invoked at stage 4 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

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 Chairman of the Staffing Committee) 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 to due 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.

Outcomes and penalties

Stage 1 – Verbal warning

In the instance of a first complaint that conduct does not meet acceptable standards, the employee will normally be given a formal verbal 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 support available (where applicable)
- His or her right to 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 line manager. This will be 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 to 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 to appeal. A copy of this final written warning will be kept by the line manager (or in the case of the Clerk by the Chairman of the Staffing Committee) 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 believe Gross Misconduct has occurred, dismissal may result. Only the Staffing Committee can take the decision to dismiss an employee. The employee will be given a written statement of allegations against him or 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 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 the right to 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.

If an employee is accused of an act of Gross Misconduct, the employee may be suspended from work on full pay whilst the Council investigates the alleged offence. Only the Staffing 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. Councils need to consider the implications of such arrangements on its hearing and appeal panel plans early on in the disciplinary process.

In the event of dismissal, the employee will be required to surrender all property belonging to the Council, including laptops and mobile phones for example, and will be required to vacate any property owned by the Council.

Appeals

The appeals stage of the disciplinary process is part of the Code of Practice to which an employee has a right. The can be exercised after any stage of disciplinary action for Misconduct (poor performance) or Gross Misconduct.

An employee who wishes to appeal against a disciplinary decision should inform the Chairman of the Staffing Committee within 5 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 the Full Council, which will be made up of Members not part of the Staffing Committee and have therefore not been involved in the original disciplinary hearing, who 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 and reasons for it will be advised to the employee as soon as possible after the meeting and be confirmed in writing.

At the appeal hearing any disciplinary penalty imposed will be review but it cannot be increased. The decision taken at the appeal hearing will be final.

The right to be accompanied

At each stage of disciplinary interview an employee has the right to be accompanied and can make a reasonable request for such person to accompany them. An employee can ask any other employee or 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 interview. 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, for example a partner, parent or solicitor. The companion can address the hearing, put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee. The companion cannot however answer questions on the employee's behalf or address the hearing if the employee does not wish him or her to or prevent the employee explaining their case.

Hearing panels

The Staffing Committee who hear disciplinary and grievance hearings will be appointed on an annual basis so that if a dispute does arise in the workplace the elected Members involved are already briefed of their duties. As a hearing panel member. In situations where individual Members are implicated in the dispute or have undertaken an investigatory role then they will need to be substituted as panel members.

Note taking

It is highly recommended that a note taker be provided to every meeting / hearing which arises as a result of a disciplinary process as Employment Tribunals are particularly keen to view contemporaneous notes of events which have led to an employment dispute. Councils will need to give this requirement careful consideration in order to respect employment confidentiality.

Grievances raised during disciplinarys

In some circumstances when a disciplinary process has commenced an employee choses to exercise his or her right to raise an internal grievance about the employment relationship with the Council or individual Members. In line with ACAS advice, disciplinary matters shall be placed on hold until grievances have been

aired and actions towards a resolution have been progressed. Only in exceptional circumstances when it is considered to be pragmatic to deal with the two disputes concurrently specialist advice will be sought.

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 relationship with their employer, colleagues, subordinates or customers.

Getting it wrong

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 the Council of up to 25%. Tribunals dealing with unfair dismissal claims are particularly interested in whether the employer followed a procedure and whether the employer acted fairly and reasonably. One way in which to avoid such a penalty is to have an agreed procedure, communicate that procedure to staff and Members, revisit and review the procedure regularly and have provide training if necessary.

General Data Protection Regulations

GDPR will be strictly adhered to at all times.