

# Marchington Parish Council

## Disciplinary Procedures

### Introduction

This procedure is based on and complies with the 2017 ACAS Code of Practice <http://www.acas.org.uk/media/pdf/9/g/Discipline-and-grievances-Acas-guide.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.

The procedure will be applied fairly, consistently and in accordance with the Equality Act 2010. This procedure confirms:

- the Council will fully investigate the facts of each case
- the Council recognises that misconduct and unsatisfactory work performance are different issues. The disciplinary policy will also apply to work performance issues to ensure that all alleged instances of employees' underperformance are dealt with fairly and in a way that is consistent with required standards. However, the disciplinary policy will only be used to when performance management proves ineffective. For more information see the ACAS publication "How to manage performance" at: <http://www.acas.org.uk/index.aspx?articleid=2927>
- 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. 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 the Data Protection Act 1998
- 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. The appeal decision is final
- 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.

## **Disciplinary Investigation**

There will be an investigation of the facts. The council will appoint an Investigator who will be responsible for undertaking the disciplinary investigation. The Investigator will be independent and will normally be a councillor. If the council considers that there are no councillors who are independent (for example, because they all have direct involvement in the allegations about the employee), it will appoint someone from outside the council. The Investigator will be appointed as soon as possible after the allegations have been made. The Investigator will be asked to submit a report within 20 working days of appointment. In cases of alleged unsatisfactory performance or of allegations of minor misconduct, the appointment of an investigator may not be necessary, and the council may decide to commence disciplinary proceedings at the next stage (see Disciplinary Policy).

The Council will first 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 should be provided with a copy of the Council's disciplinary procedure. The Council will also inform the employee that when he/she meets with the Investigator, he/she will have the opportunity to comment on the allegations of misconduct.

Employees may be accompanied or represented by a trade union representative or a work colleague at any investigatory meeting. If there are other persons (e.g. 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.

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 that recommends to the Council whether disciplinary action should be taken.

The Investigator's report will contain his/her recommendations and the findings on which they were 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
- 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.
- The Investigator will submit the report to the Council which will decide whether further action will be taken.
- If the Council decides that it will not take disciplinary action, it may consider whether mediation would be appropriate in the circumstances.

## **The Disciplinary Meeting**

If the Council decides that there is a case to answer, the employee will be invited, in writing, to attend a disciplinary meeting. The committee's letter will confirm the following:

- the names of its Chairman and other two members
- 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 enough 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 five 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 hearing
- that the employee may be accompanied by a companion, either a trade union representative or a work colleague

The disciplinary meeting will be conducted as follows:

- the Chairman will introduce the members of the Council to the employee
- the investigator will present the findings of the investigation report
- the Chairman 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 Council 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 Chairman will provide the employee with the Council's decision with reasons, in writing, within five working days of the meeting. The Chairman will also notify the employee of the right to appeal the decision
- the disciplinary meeting may be adjourned to allow matters that were raised during the meeting to be investigated by the sub-committee.

## **Disciplinary Action**

If the sub-committee decides that there should be disciplinary action, it may be any of the following:

### **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 of the Council. 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 Line Manager (or in the case of the Clerk being disciplined by the Chair of the Hearing Panel) 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 Society 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 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**

If you are accused of an act of gross misconduct, you 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. Councils need to consider the implications of such arrangements on its hearing and appeal panel plans early on in the disciplinary process

The council 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.

If the sub-committee decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file. 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

An employee who is the subject of disciplinary action will be notified of the right of appeal. His/her written notice of appeal must be received by the Council within five working days of the employee receiving written notice of the disciplinary action and must specify the grounds for appeal.

The grounds for appeal include;

- a failure by the Council to follow its disciplinary policy
- the sub-committee'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.

The Appeal will be heard by a panel of three members of the council who have not previously been involved in the case. This includes the Investigator. There may be insufficient members of the Council who have not previously been involved in the case. The appeal panel will appoint a Chairman from one of its members.

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.

At the appeal meeting, the Chairman 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 Personnel sub-committee
- explain the action that the appeal panel may take.
- The employee (or his companion) will be asked to explain the grounds for appeal.
- The Chairman 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.
- The appeal panel may decide to uphold the decision of the Council, substitute a less serious sanction or decide that no disciplinary action is necessary. If it decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file.
- 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.

The appeal panel's decision is final.