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Disciplinary Procedures

Introduction

This procedure is designed to help and encourage all St Erth Parish Council (the 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 Advisory Conciliation & Arbitration Service (ACAS) Code of Practice 2015.

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 them and will be given the opportunity to state their 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 may be applied.

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

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

Examples of Misconduct

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

- unauthorised absence from work;
- lateness for work or poor time keeping;
- inappropriate or disruptive behaviour;
- minor breaches of Health and Safety procedures;
- misuse of the Council's facilities (e.g. computers, email or the internet);
- refusal to carry out reasonable requests or instructions;
- repeatedly not adhering to or applying adopted policies.

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 Sickness Absence Policy.

Examples of Gross Misconduct

The following list provides examples of offences which are normally regarded as gross misconduct whilst at work or representing the Council:

- 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;
- gross negligence;
- being under the influence of illegal drugs or alcohol;
- bullying, discrimination and harassment;
- serious acts of insubordination;
- disclosure of confidential information;
- serious breach of the Council's policies and procedures;
- any action that is likely to or does bring the Council into disrepute;
- accepting bribes or incentive payments from suppliers.

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.

Suspension

If an employee is accused of an act of gross misconduct, they 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.

Procedure

Informal Action

Minor misconduct will be dealt with informally usually in a confidential one-to-one meeting between the employee and members of the Staffing Committee and involve an informal meeting initially. However, where the matter is more serious or informal action has not brought about the necessary improvement, Formal Action will be taken:

Formal Action

The level of warning an employee may receive for misconduct/gross misconduct will depend on how serious the Council considers the alleged actions to be and the previous conduct in all the circumstances. In the event of alleged gross misconduct, the formal process may commence at Stage 4 – see below.

Disciplinary Letters

If there is a concern about an employee's conduct or behaviour then a letter will be given to the employee advising them 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 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 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.

Outcomes & 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. They 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
- their 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 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 of the right of appeal. A copy of this final written warning will be kept 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 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 them, 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.

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 Chair 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; or
- 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, who will view the evidence with impartiality. The employee will have the right to be accompanied by an 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 reviewed but cannot be increased. The decision taken at the Appeal hearing will be final.

The Right to be Accompanied

At each formal stage of disciplinary interview an employee has the right to be accompanied and can make a reasonable request for such a person to accompany them. An employee can have a trade union representative or 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 e.g. partner, parent, solicitor etc. The companion can address the hearing, put and sum up the employee's case, respond on behalf of the worker to any views expressed at the meeting, 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 them to or prevent the employee explaining their case.

Hearing Panels

The Society of Local Council Clerks (SLCC) advises that councils establish hearing panels to hear disciplinary and grievance hearings on an annual basis so that if a dispute does arise in the workplace the elected members involved are already trained and briefed on their duties as a hearing or appeal 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 employee confidentiality.

Grievances Raised During Disciplinarys

In some circumstances when a disciplinary process has commenced an employee chooses to exercise their right to raise an internal grievance about the employment relationship with the Council or individual Members. In line with ACAS advice, it is recommended that disciplinary matters are placed on hold until grievances have been aired and actions towards a resolution have been progressed. In exceptional circumstances it is pragmatic to deal with the two disputes concurrently but caution is advised and specialist advice should be sought if this arises.

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 their job duties and their relationships with the 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 some training for those who are expected to operate the procedure.

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