

MISTERTON PARISH COUNCIL

DISCIPLINARY PROCEDURE

INTRODUCTION

1.1 Purpose

The following disciplinary procedure is part of the conditions of service, and is applicable to all employees.

It is recognised by the Council that discipline is essential for the conduct of the Authority's affairs, and for the safety and well being of all employees and the public. All parties have identified that a disciplinary code should be fair and equitably applied. It is similarly agreed that all disciplinary matters should be dealt with as quickly as possible whilst recognising the need for a full investigation to be undertaken.

1.2 Key Principles

It is unlawful to discriminate in the operation of disciplinary procedures, for example by victimising an individual through disciplinary measures because he or she has complained about racial, disability or sex discrimination, harassment or given evidence about such a complaint. The Council should not ignore or treat lightly grievances from members of particular groups on the assumption that they are over-sensitive about discrimination.

It is recommended that in applying disciplinary procedures consideration should be given to the possible effect on an employee's behaviour of the following:

- * Discriminatory abuse or other discriminatory provocation
- * Communication and comprehension difficulties
- * Differences in background or behaviour

Misterton Parish Council understands that it is the right and duty of the Chairman of the Council to manage and maintain acceptable standards of conduct. He/she is authorised to deal with minor cases of misconduct through informal counselling without resorting to the formal disciplinary mechanism. Notes of any such counselling meetings must be kept by management and the salient facts, any agreements reached or other outcomes must be confirmed in writing to the employee as soon as practicable. The employee has the right to be accompanied at any such counselling meeting by a Trade Union Representative, or employee of their choice. The disciplinary procedures that follow, are not intended to interfere with, or supersede, that right or duty and are reserved for misconduct which in the opinion of the Council cannot be dealt with informally.

These disciplinary procedures do not prejudice any employee's right to appeal subsequently through the existing mechanisms.

In the interest of good industrial relations any formal disciplinary action by way of written warnings given to an employee will be communicated to his/her Trade Union Representative (if any) within 5 working days unless the employee requests otherwise.

No disciplinary action shall be taken against a Union Representative, including Safety Representative, until the circumstances of the case have been discussed with the Chairman of the Council and a full-time official of the Trade Union concerned.

It is the responsibility of the employee to contact their Trade Union Representatives should they wish to be represented at any disciplinary hearing.

The Chairman of the Council will be consulted throughout the application of this procedure.

THE DISCIPLINARY PROCEDURE

2.1 Suspension Prior To Disciplinary Hearing

The Chairman of the Council may suspend an employee from duty in order (See Appendix 3), for example: -

In cases, where it is believed, serious misconduct has been committed

- * To safeguard the personal welfare of employees, clients or members of the public
- * To safeguard the assets of the Authority
- * To allow investigations to take place without possible interference into the circumstances of a potentially serious disciplinary offence
- * Temporary redeployment may be considered as an alternative to suspension

Such suspension shall be regarded as precautionary and not a disciplinary sanction.

Suspensions should be brief and, in any case, should be reviewed at four weekly intervals. The outcome of any such review should be communicated to the employee in writing.

Where issues requiring suspension arise outside the course of the normal working day/week, the employee may be sent home and asked to return on the next normal working day so that the appropriate officer may consider the issue of suspension.

All suspensions should immediately be confirmed in writing to the employee(s) concerned with a copy to the employee's Trade Union or other representative unless the employee requests otherwise.

All employees who are suspended prior to a formal disciplinary hearing shall receive full pay for the duration of the suspension including any bonus payments.

2.2 Disciplinary Hearing

All formal disciplinary action should be undertaken within the following procedure:

Prior to Hearing:

The Chairman of the Council should consult with ACAS, who will advise on good practice, precedents and procedures to be followed.

The responsibility is on the Chairman of the Council to write to the employee stating:

- * The date, venue and time of the disciplinary hearing allowing the employee ten working days from the date of notification to prepare his/her case.
- * The precise allegation, which the employee is called upon to answer.
- * The employee's right to be represented by his/her Trade Union or employee of their choice.
- * The employer must inform the employee of their right of an adjournment of up to 5 working days of the arranged date if the Trade Union representative or employee of their choice is unavailable.

The Chairman of the Council must enclose any statements of written evidence that is to be presented by management.

The Chairman of the Council must ensure that the date of the hearing will give the employee sufficient time to arrange representation. An adjournment at the employee's request of up to 5 working days from the arranged date is allowed for the employee to arrange representation of their choice if representation cannot be obtained for the arranged date of the disciplinary hearing. Request for a postponement due to sickness absence (See Appendix 4).

2.3 Disciplinary Action – Warnings

Following the disciplinary hearing, where an employee's work, conduct or omission are such as to warrant disciplinary action, the Chairman of the Council may impose one of the following official sanctions - dependent on the seriousness of the offence the procedure may be invoked at any level including summary dismissal:

- * In cases of a less serious breach of discipline a formal oral warning, a copy of related correspondence to remain on the employee's disciplinary record for a period of 6 months from the date of the disciplinary hearing.

- * In the case of a more serious offence or a further breach of discipline a written warning which shall remain on the employee's disciplinary record for a period of 9 months from the date of the disciplinary hearing.
- * In cases where there is still a failure to improve or there is a further act of misconduct or if the misconduct is sufficiently serious to warrant only one written warning a Final written warning which shall remain on the employee's disciplinary record for a period of 12 months from the date of the disciplinary hearing.
- * In cases where there is still a failure to improve or there is a further act of misconduct, other than gross misconduct, an employee will be liable to dismissal with notice or pay in lieu of notice after following the recognised disciplinary procedure.

After the expiration of these periods the warnings shall be physically expunged from an employee's disciplinary record, the details of which must be kept confidential and secure.

A copy of the letter confirming the warning will be forwarded to the employee's Trade Union or other representative unless the employee requests otherwise.

All warnings should be confirmed by letter signed by the Chairman of the Council. This letter must state the grounds for the action taken and confirm the individual's right to appeal. (See below). The letter must be delivered by hand or recorded delivery.

All current disciplinary records shall be kept on the employee's personal file kept by the Chairman of the Parish Council. These records must be confidential, but may be seen by the Trade Union Representative or fellow employee subject to the consent of the employee concerned, if the records are going to be used in a subsequent disciplinary hearing.

All employees who have disciplinary action taken against them should be advised that as long as the warning is current a further act of misconduct might result in further action being taken which could lead to their dismissal.

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| 2.4 | Dismissal |
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Continuing Misconduct

The Chairman of the Council may, if further disciplinary action is warranted, dismiss an employee with notice after following the recognised disciplinary procedure if that employee has an unexpired Final Warning on his/her record.

Gross Misconduct

There are few circumstances in which an employee will be dismissed for a first breach of discipline, but this action will be deemed appropriate for employees who commit offences, which are normally regarded as gross misconduct. The Chairman of the Council may summarily dismiss an employee on the grounds of gross misconduct after following the recognised procedure.

Gross misconduct is conduct of such a nature that the Authority cannot reasonably continue to allow the employees presence at the place of work. Dismissal for gross misconduct does not have to be preceded by a formal warning. Examples of offences of gross misconduct, which have previously led to the dismissal of local authority employees, are attached as Appendix 1 for guidance.

Any disciplinary action resulting in dismissal should immediately be confirmed by letter signed by the Chairman of the Council. This letter must state the grounds for the action taken and confirm the individual's right of appeal. The letter will be delivered by hand or by Recorded Delivery.

2.5 Right of Appeal

If the employee, either individually or through his/her Trade Union Official, wishes to exercise such right of appeal against any form of disciplinary action taken against him/her they must do so by writing to the Vice-Chairman of the Parish Council within 10 working days of receipt of the letter confirming the sanction. Appeals will be heard by the Appeals Panel.

If an employee successfully appeals to the Appeals Panel against a decision to terminate their employment, they shall be entitled to be paid normal average salary/wages from the time of dismissal to the time of reinstatement in accordance with the decision of the Panel. The Panel may impose a period of suspension without pay from the time of dismissal to reinstatement as an alternative to dismissal in very exceptional circumstances having considered all the facts of the case.

The Appeals Panel will be convened as soon as possible following receipt of the employee's appeal.

2.6 Review of Disciplinary Record

The Chairman of the Council will withdraw a disciplinary sanction taken against an employee (after first notifying them) if it is subsequently found to be unfair. This decision to be confirmed in writing to the employee and their Trade Union Representative.

This does not apply to any disciplinary sanction given by the Appeals Panel (see above).

2.7**Exclusions From The Procedure**

This procedure does not apply to notice given:-

- * On termination of employment for which an employee has been specifically engaged (temporary term contract).
- * In the event of redundancy.

APPENDIX 1

EXAMPLES OF GROSS MISCONDUCT

The following are examples, which the Council could normally consider to be breaches of discipline, which would be considered as matters of misconduct or gross misconduct. The lists have been produced for guidance purposes only and are not therefore exhaustive or exclusive. There may be other matters of a similar nature, which result in disciplinary action being taken.

Misconduct

The following list indicates the type of conduct, which could normally constitute misconduct:

- * Failure to follow Council procedures or reasonable instructions.
- * Unauthorised use of, or misuse of, Council vehicles, facilities or equipment.
- * Incapability through the abuse of alcohol or non-prescribed drugs.
- * Unauthorised disclosure of confidential information.
- * Poor timekeeping.
- * Unauthorised absence.
- * Failure to notify absence as required under Council Procedure.
- * Failing to maintain an acceptable standard of job performance.
- * Disregard of safety practices, procedures and rules.
- * Failure to observe any requirement of the Council's Equal Opportunities Policy.

Gross Misconduct

The following list indicates the type of conduct, which could normally constitute gross misconduct:

- * Unauthorised removal of the Authority's property
- * Stealing from the Authority, its Members, members of staff or the public and other offences of dishonesty
- * Persistent failure to comply with the Authority's recognised policies and procedures
- * Fraud and Corruption
- * Sexual misconduct at work
- * Deliberate falsification of subsistence and expenses claims etc.
- * Falsification of qualifications which are a stated requirement of employment or which result in financial gain
- * Malicious damage to the Authority's property
- * Serious breaches of safety regulations endangering other people, including deliberate damage to, neglect of or misappropriation of safety equipment
- * The persistent and wilful refusal to carry out a reasonable instruction despite warnings of the consequences of continued refusal
- * The commission of a serious breach of duty prejudicial to the Authority's relations with members of the public or other outside contacts or any wilful attempt to damage the standing or position of the Authority

- * Serious or persistent sexual or racial harassment
- * Incapability through the abuse of alcohol or non-prescribed drugs

NOTE

Examples of offences which may warrant dismissal for a first breach of discipline, and which are therefore viewed as gross misconduct are given above. The list is not intended to be exclusive or exhaustive, but merely gives an indication of the level of misconduct, which will normally result in summary dismissal unless there are mitigating circumstances

APPENDIX 2

INVESTIGATORY MEETINGS

It may be necessary on occasions for management to meet with employees in order to clarify/seek explanations relating to potential disciplinary situations before considering whether or not a disciplinary hearing ought to be arranged. Guidelines regarding investigatory meetings:

- * Tell the employee the reason(s) why you want to see him/her. Try to be specific about the reason(s); you will have to use your judgement as to how much detail to go into, as this will depend upon the issue to be addressed. Try to leave no doubt in the employees mind as to why the meeting has been arranged, however.
- * If you are able to, give the employee any written documentation prior to the meeting. Again, judgement will have to be used here whether to disclose written documentation at this stage - the documentation may contain sensitive information, information that is confidential or not entirely relevant to the employee, or you may legitimately need to show the employee at the meeting with certain documents in order to seek an immediate explanation.
- * Always advise the employee of who will be present at the meeting. Keep the numbers down.
- * Always advise the employee of his/her right to be represented by a Trade Union Representative or employee of their choice. In the absence of a Trade Union Representative verbatim notes or recording of the proceedings will be provided to the employee and their Trade Union Representative.
- * Remember that this meeting is not a disciplinary hearing - its main purpose is for management to determine whether or not there is a case to answer and if so whether a formal disciplinary hearing should be arranged.
- * Keep the timescales short, it is legitimate to arrange such meetings with a relative short timescale - for example it is in order to inform an employee in the morning that you wish to see him/her the same afternoon or following morning.

APPENDIX 3

SUSPENSION OF EMPLOYEES PENDING DISCIPLINARY INVESTIGATIONS

Suspension prior to a disciplinary hearing should only be used in those cases where the possibility of serious disciplinary action could arise. Normally, suspension from work, pending the findings of any investigation, would be appropriate in instances where there is a risk to other employees, members of the public, clients, the Council's assets, or the employee him/herself may interfere with the process of the investigation itself or what the employee is alleged to have done is so serious that it is better not to have him/her at work pending further investigation. As an alternative to suspensions temporary redeployment should be considered where appropriate.

Where issues requiring suspension arise outside the course of the normal working day/week, the employee may be sent home and asked to return on the next normal working day so that the appropriate officer may consider the issue of suspension.

If suspension is considered an appropriate course of action, it should be instigated immediately the management concern has been identified. Any delay in this matter may severely jeopardise management's case at any future disciplinary hearing/Employment Tribunal.

The period of suspension should be kept as short and reviewed after each four-week period as possible but sufficient to enable a detailed enquiry into the case to be undertaken. A disciplinary hearing, if considered necessary, should be held as soon as the investigation has been completed.

During a period of suspension the employee should be paid an allowance as set out in the Councils Disciplinary Procedures.

APPENDIX 4

SICKNESS ABSENCE AND DISCIPLINARY HEARINGS

Guidance when dealing with employees facing the prospect of disciplinary action who subsequently take sick leave: -

- * If, despite being on sick leave, the employee states that they are fit to attend a disciplinary hearing - proceed with it, in accordance with the disciplinary procedure.
- * If the employee claims that they are medically unfit to attend a disciplinary hearing the following action should be taken:
 - inform the employee that an appointment will be made with an independent medical examiner of the Council's choosing to ascertain, in consultation with the employee's GP, whether or not the employee is deemed fit to attend a disciplinary hearing;
 - seek such an appointment.

The questions to be asked are: -

Is the employee fit to attend a disciplinary hearing regarding his/her conduct at work? and

If not, when will he/she be fit to attend such a hearing?

- * If the nominated independent medical examiner states that the employee is fit to attend, notify the employee accordingly and arrange the disciplinary hearing, advising the employee that the hearing will proceed in their absence if they don't attend, and they can send a representative to present their case. The employee must be given full details of the allegations and any associated statements, in good time before the hearing.
- * If the nominated independent medical adviser states that the employee is not fit to attend the hearing, but will be fit in a relatively short period of time, postpone the hearing until the employee is fit to attend.
- * If the nominated independent medical adviser states that the employee is unlikely to be fit to attend such a hearing in the longer term, notify him/her accordingly, and state that the hearing will proceed in their absence and they can send a representative to present their case.

- * The employee must be given full details of the allegations and associated statement in good time before the hearing.
- * If the employee refuses to attend, the disciplinary hearing will proceed, and if they choose not to attend the hearing they can send a representative to present their case.
- * If there is clear evidence of abuse of the sickness scheme, it will not be necessary to make a referral to an independent medical adviser and the disciplinary hearing will proceed.

APPENDIX 5

PROCEDURE TO FOLLOW AT A DISCIPLINARY HEARING

The Disciplinary Panel will comprise three Members of the Council, other than the Chairman and Vice-Chairman and Members who have been involved in the matter. It is, therefore, important that disciplinary matters are not discussed at meetings prior to action being taken.

At all stages of the hearing the employee will be fully informed of the complaint against him/her and be given every opportunity to state his/her case before any decision is reached.

The employee will be given the right to be accompanied by his/her Trade Union Representative or employee of their choice.

In cases heard at the final stage of this procedure the Chairman of the Council, employee or their representative will prepare a written statement of case which should be exchanged two days prior to the hearing date.

A written record of the hearing will be taken and kept confidential on the employee's personnel file.

The following procedure should be followed within the hearing:

The Chairman of the Panel will introduce the people present at the hearing; describe the reasons for the hearing and explains the procedure which will be followed and inform the employee and/or his/her representative of their right of adjournment at any time during the hearing.

The Chairman of the Council to put the case in the presence of the employee and his/her representative. The Chairman of the Council may call witnesses in support of the management case.

The employee and/or her/his representative) to have the opportunity to ask questions of the Chairman of the Council on the evidence given by them and any witnesses called.

The members of the Panel to have the opportunity to ask questions of the Chairman of the Council and witnesses.

The employee and/or his/her representative to put their case in the presence of the Chairman of the Council and to call such witnesses as they wish.

The Chairman of the Council to have the opportunity to ask questions of the employee and his/her witnesses.

The members of the Panel to have the opportunity to ask questions of the employee and his/her witnesses.

The Chairman of the Council to have the opportunity to sum up his/her case if he/she so wishes.

The employee and /or his/her representative to have the opportunity sum up their case if they so wish.

The Chairman of the Council and the employee and his/her representative and witnesses to withdraw.

The Panel to deliberate in private on an unbiased consideration of the evidence, which shall have regard to any mitigating circumstances.

The Chairman of the Panel may invite the employee/his/her representative/the Chairman of the Parish Council back at any time to clarify a point of fact. All parties to the hearing will be present during this clarification.

The Chairman of the Panel to recall the Chairman of the Parish Council and the employee and his/her representative to announce the decision which will then be conveyed to the parties concerned in writing within seven working days of the hearing. A copy of the letter will be sent to the Trade Union if represented at the hearing.

The Chairman of the Panel will advise the employee of their right of appeal and how to exercise that right.

APPENDIX 6

APPEALS PROCEDURE

INTRODUCTION

The Appeals Panel will comprise three Members of the Council, other than the Chairman, Vice-Chairman and Members who attended the Disciplinary Hearing.

Employees of the Council who have been subject to disciplinary action have the right of appeal.

Any employee wishing to appeal must do so in writing to the Vice-Chairman of the Council within 10 working days of receipt of the letter confirming the sanction. The Appeals Panel will hear appeals against dismissal.

Appeals shall not be heard by any person who has been directly involved in the circumstances leading to disciplinary action. Individuals involved in the circumstances that indicated the need for disciplinary action shall only be present at the Appeals Hearing as a witness or as the management representative.

Witnesses who have already given evidence at the Disciplinary Hearing may be recalled to give evidence at the appeal by the employee and/or management side.

The management side and the employee and his/her representative will each prepare a statement of case, explaining the basis of their case, which will be submitted to the Vice-Chairman of the Council five days before the date of the hearing.

All documents will be sent out to members of the Appeal Panel and both parties involved in the Appeal.

The employee may choose to be represented by their Trade Union Representative, employee of their choice or may represent himself or herself.

PROCEDURE

The Chairman of the Council shall state the management case in the presence of the employee and his/her representative and may call witnesses.

The employee or his/her representative shall have the opportunity to ask questions of the Chairman of the Council and management witnesses.

The members of the Appeals Panel shall have the opportunity to question the Chairman of the Council and management witnesses.

The employee or his/her representative shall present his/her case in the presence of the Chairman of the Council and call witnesses. The Chairman of the Council shall have the opportunity to ask questions of the employee, his/her representative and the employee's witnesses.

The Chairman of the Appeals Panel shall invite the Chairman of the Council to sum up his/her case advising that no new evidence may be introduced.

The Chairman of the Appeals Panel shall invite the employee or his/her representative to sum up their case advising that no new evidence may be introduced.

Both parties will be asked to withdraw whilst the Appeals Panel have the opportunity to deliberate the cases which have been presented to them.

Should a point of clarification be required both parties will be recalled notwithstanding that only one party may be concerned with the point of clarification.

Once the Appeals Panel has reached a conclusion, both parties will be recalled to hear the decision. This will be confirmed to the employee in writing within 5 working days. The employee and his/her representative should be informed of their rights of appeal in relation to Stages 1, 2 and 3 of the Disciplinary Procedure. In respect of appeals heard at Stage 4 of the Disciplinary Procedure, the employee and his/her representative should be informed that there is no further right of appeal under the Council's procedures.

Version 1 of 1
Approved by: Parish Council
Date: 13 June 2006