



KIPPAX PARISH COUNCIL

DISCIPLINARY POLICY AND PROCEDURE

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M Eyre

Signed by Chair, Councillor Martin Eyre

INTRODUCTION

This policy is based on and complies with the 2015 ACAS Code of Practice. It also takes into account the ACAS guide on discipline and grievances at work. The policy is designed to help council employees improve unsatisfactory conduct and performance in their jobs. Wherever possible, the council will try to resolve its concerns about employees' behaviour informally, without starting the formal procedure set out below. The policy will be applied fairly, consistently and in accordance with the Equality Act 2010.

PRINCIPLES

- a) 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 when performance management proves ineffective. For more information, see ACAS Performance Management.
- b) Informal coaching and supervision will be considered, where appropriate, to improve conduct and/or attendance.
- c) No disciplinary action will be taken against an employee until the case has been fully investigated

- d) At every stage in the procedure the employee will be informed in writing about 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.
- e) Employees will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary hearing.
- f) At all formal stages the employee will have the right to be accompanied by a companion - trade union representative or work colleague - during investigatory, disciplinary or appeal meetings. 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 their case.
- g) 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.
- h) 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 seven calendar days of the original meeting date, unless it is unreasonable not to propose a later date.
- i) Any changes to specified time limits in the council's procedure must be agreed to by the employee and the council.
- j) 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 General Data Protection Regulation (GDPR).
- k) Audio or video recordings of the proceedings at any stage of the disciplinary procedure are prohibited, unless agreed by all affected parties as a reasonable adjustment that takes account of an employee's medical condition.
- l) 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.
- m) Disciplinary action taken by the council can include a written warning, a final written warning or dismissal.
- n) 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.

- o) An employee will have the right to appeal against any disciplinary penalty imposed. The appeal decision is final.
- p) The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.
- q) 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.
- r) 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 consent of affected parties.

Examples of misconduct

The following list provides examples of **misconduct** which will normally give rise to formal disciplinary action (the list is not exhaustive):

- Unauthorised absence from work
- Persistent short-term and/or frequent absences from work without a medical reason
- Lateness for work or poor time keeping
- Inappropriate standard of dress
- Minor breaches of Health and Safety or other Society rules or procedures
- Failure to perform your job to the standard expected or in line with your job description/objectives
- Time wasting
- Disruptive behaviour
- Misuse of the council's facilities (e.g. telephones, computers, email or the internet)
- Refusal to carry out reasonable requests or instructions
- Failure to follow an agreed council procedure

Examples of gross misconduct

Gross misconduct is misconduct that is so serious that it is likely to lead to dismissal without notice. The following list provides examples of offences which are normally regarded as **gross misconduct** (the list is not exhaustive):

- Theft, fraud, deliberate falsification of records, or other acts of dishonesty
- Fighting, assault on another person
- Serious and deliberate damage to property of the council, its workers or members
- Gross incompetence in the conduct of work
- Gross negligence which results in the council or employees being put at risk.
- Being under the influence of illegal drugs or excessive alcohol at work
- Acts of incitement towards or actual acts of bullying, 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
- Serious breach of duty to keep information of the council, its service providers and its clients confidential
- Unauthorised entry to computer records
- Serious breach of the council's policies and procedures, e.g. Health & Safety Policy, Equality Policy, Data Protection Policy and IT and email Policy
- Any action 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
- 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 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, or serious misconduct, the Personnel Committee may suspend them from work on full pay while the council investigates the alleged offence. Suspension does not imply any determination of guilt or innocence, as it is merely a measure to enable further investigation.

While on suspension, you are required to be available during normal hours of work in the event that the council needs to make contact. You must not contact or attempt to contact or influence anyone connected with the investigation in any way or discuss this matter with any other employee or councillor.

You must not attend work. The council will make arrangements for the employee to access any information or documents required to respond to any allegations.

Examples of unsatisfactory work performance

The following list contains some examples of **unsatisfactory work performance** (the list is not exhaustive):

- Inadequate application of management instructions/office procedures.
- Inadequate IT skills.
- Unsatisfactory management of staff.
- Unsatisfactory communication skills.

THE PROCEDURE

Hearing/Appeal Panel Pool

The Full Council will elect members to a Hearing/Appeals Panel Pool on an annual basis at the Annual Meeting of the Council 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 of the pool are implicated in the dispute or have undertaken an investigatory role then they will not be able to take part in the hearing or appeal.

INFORMAL ACTION:

Where minor concerns about conduct become apparent, it is the Line Manager/Liaison Councillor's responsibility to raise this with the employee and clarify the improvements required. A file note will be made and kept by the manager. The informal discussions are not part of the formal disciplinary procedure. If the conduct fails to improve, or if further matters of conduct become apparent, the manager may decide to instigate the formal disciplinary procedure and refer the matter to the Personnel Committee.

FORMAL ACTION:

The Personnel Committee will consider if the employee has a case to answer and a formal disciplinary hearing is required; if the matter is not serious enough and can be dealt with informally or if there is no case to answer and requires no further action.

If the Personnel Committee considers that a formal disciplinary hearing is required, it will:

- appoint three members from the Hearing/Appeals Panel Pool to a Hearing Panel to formally hear the allegations
- appoint a member of the Hearing Panel as Chair
- appoint three other members from the Hearing/Appeals Panel Pool to an Appeal Panel, to formally hear an appeal should one arise
- appoint a member of the Appeal Panel as Chair.

The Hearing Panel will be given the delegated authority to make a decision in relation to the disciplinary. The Appeal Panel will be given the delegated authority to make a decision in relation to an appeal. No councillor with direct involvement in the matter shall be appointed to the Hearing or Appeal Panels.

If the case is complex the Personnel Committee may decide that a formal disciplinary investigation is required to establish the facts before a decision on how to proceed can be made.

If a formal disciplinary investigation is required, the Personnel Committee will appoint an Investigator from the Hearing/Appeals Panel Pool, who will not subsequently be appointed to either the Hearing or Appeal Panel. If the Personnel Committee considers that there are no members of the Hearing/Appeals Panel Pool who are independent (for example, because they

all have direct involvement in the allegations about the employee), it will appoint a Councillor from outside the pool or an independent person from outside the Council if required.

If the Personnel Committee decides that it will not take disciplinary action, it may consider whether mediation would be appropriate in the circumstances.

Disciplinary investigation

The Investigator will be responsible for undertaking a fact-finding exercise to collect all relevant information. The Personnel Committee will inform the Investigator of the terms of reference of the investigation. The terms of reference should specify:

- The allegations or events that the investigation is required to examine.
- Whether a recommendation is required
- How the findings should be presented. For example, an investigator will often be required to present the findings in the form of a written report.
- Who the findings should be reported to and who to contact for further direction if unexpected issues arise or advice is needed.

The Investigator will be asked to submit their findings, usually within 35 calendar days of appointment, where possible.

The Personnel Committee will notify the employee in writing of the alleged misconduct and details of the person undertaking the investigation. The employee may be asked to meet an investigator as part of the disciplinary investigation. The employee will be given sufficient notice of the meeting with the Investigator so that they have a reasonable time to prepare for it. The letter will explain the investigatory process and that the meeting is part of that process. The employee will be provided with a copy of the council's disciplinary procedure. The council will also inform the employee that when they meet with the Investigator, they will have the opportunity to comment on the allegations of misconduct.

Employees may be accompanied or represented by a workplace colleague, a trade union representative or a trade union official 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. Their role is to establish the facts of the case as quickly as possible and prepare a report that recommends to the Personnel Committee whether or not disciplinary action should be considered under the policy.

The Investigator will submit the report to the Personnel Committee, which will decide whether there is no case to answer; the matter should be considered informally, or a formal Disciplinary Hearing should be convened. If the Investigator is a member of the Committee making the

decision, they should excuse themselves from any formal votes or decision-making regarding their findings as to whether there is a case to answer at a Disciplinary Hearing.

Disciplinary Meeting

The employee will be invited, in writing, to attend a disciplinary meeting. The Hearing Panel's letter will confirm the following:

- The names of its chair and the 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 information provided to the sub-committee, which may include the investigation report, 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 so that they have sufficient time to prepare for it.
- Whether witnesses may attend on the employee's and the council's behalf, and if they may, both parties should inform each other of their witnesses' names at least two working days before the meeting.
- The employee may be accompanied by a companion - a workplace colleague, a trade union representative or a trade union official.

The purpose of the disciplinary meeting hearing is for the allegations to be put to the employee and then for the employee to give their perspective. It will be conducted as follows:

- The chair will introduce the members of the Hearing Panel to the employee and explain the arrangements for the hearing.
- The chair will set out the allegations and invite the Investigator to present the findings of the investigation report (if there has been a previous investigation).
- The chair will invite the employee to present their account.
- The employee (or the companion) will set out their case and present evidence (including any witnesses and/or witness statements).
- Any member of the Hearing Panel and the employee (or the companion) may question the Investigator and any witness.
- The employee (or companion) will have the opportunity to sum up.

The Hearing Panel Chair will provide the employee with the panel's decision with reasons, in writing, within 7 calendar days of the meeting. The Chair will also notify the employee of the right to appeal the decision in the event that formal action is taken.

The disciplinary meeting may be adjourned to allow matters that were raised during the meeting to be further investigated by the Hearing Panel.

DISCIPLINARY ACTION

If the Hearing Panel decides that there should be disciplinary action, it may be any of the following:

First Written Warning

If the employee's conduct has fallen below acceptable standards, a first written warning will be issued. A first written warning will set out:

- The reason for the written warning, the improvement required (if appropriate) and the time period for improvement.
- That further misconduct/failure to improve will result in more serious disciplinary action.
- The employee's right of appeal.
- That a note confirming the written warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for a specified period of time (e.g. 12 months).

Final Written Warning

If the offence is sufficiently serious, or if there is further misconduct or a failure to improve sufficiently during the currency of a prior warning, the employee will be given a final written warning. A final written warning will set out:

- The reason for the final written warning, the improvement required (if appropriate) and the time period for improvement.
- That further misconduct/failure to improve will result in more serious disciplinary action up to and including dismissal.
- The employee's right of appeal.
- That a note confirming the final written warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for a specified period of time (e.g. 12 months).

Dismissal

The council may dismiss:

- For gross misconduct.
- If there is no improvement within the specified time period, in the conduct which has been the subject of a final written warning.
- If another instance of misconduct has occurred and a final written warning has already been issued and remains in force.

The council will consider very carefully a decision to dismiss. If an employee is dismissed, they will receive a written statement of the reasons for their dismissal, the date on which the employment will end and details of their right of appeal.

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

Action taken as a result of the disciplinary meeting will remain in force unless it is modified as a result of an appeal.

APPEALS

An employee who is the subject of disciplinary action will be notified of the right of appeal. Their written notice of appeal must be received by the council within seven calendar 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 did not support the sub-committee's disciplinary decision.
- The disciplinary action was too severe in the circumstances of the case.
- New evidence has come to light since the disciplinary meeting.

The employee will be notified, in writing, within 14 calendar days of receipt of the notice of appeal of the time, date and place of the appeal meeting. The employee will be advised that they may be accompanied by a companion - a workplace colleague, a trade union representative or a trade union official.

At the appeal meeting, the Chair 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 disciplinary decision.
- Explain the action that the appeal panel may take.

The employee (or companion) will be asked to explain the grounds for appeal.

The chair will inform the employee that they will receive the decision and the panel's reasons, in writing, usually within five working days of the Appeal Hearing.

The Appeal Panel may decide to uphold the disciplinary decision of the Hearing Panel, 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 in 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.