SOUTH HANNINGFIELD PARISH COUNCIL

DISCIPLINARY POLICY

Introduction

1. This policy is based on and complies with the 2015 ACAS Code of Practice. It also takes account of the ACAS guide on discipline and grievances at work.

   The policy is designed to help an employee improve unsatisfactory conduct. Wherever possible, the Council will try to resolve its concerns about the employee's behaviour informally, without starting the formal procedure set out below.

2 The policy will be applied fairly, consistently and in accordance with the Equality Act 2010.

3 **Principles**

- informal coaching and supervision will be considered, where appropriate, to improve conduct and / or attendance
- the Council will fully investigate the facts of each case
- the employee will be informed in writing about the nature of the complaint against him/her and given the opportunity to state his/her case
- the employee will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary hearing
- the employee may be accompanied or represented by a companion or a trade union representative at any investigatory, disciplinary or appeal 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.
- the Council will give the employee reasonable notice of any meetings in this procedure. The employee must make all reasonable efforts to attend. Failure to attend any meeting may result in it going ahead and a decision being taken. If the employee does not attend a meeting they 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 unless it is unreasonable not to propose a later date
- any changes to specified time limits in the Council's procedure must be agreed by the employee and the Council
- information about the 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)
- the employee has the right to appeal against any disciplinary decision.
- The appeal decision is final
- disciplinary action taken by the Council can include a written warning, final written warning or dismissal
- this procedure may be implemented at any stage if the employee's alleged misconduct warrants this

- except for gross misconduct when the employee may be dismissed without notice, the Council will not dismiss the employee on the first occasion that it decides there has been misconduct
- if the 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 consent of affected parties
- audio or video recordings of the proceedings at any stage of the disciplinary procedure are prohibited, unless agreed by all affected parties
- if the employee is already subject to the Council's disciplinary procedure and raises a grievance, the grievance will normally be heard after the completion of the disciplinary procedure

4. Examples of misconduct

Misconduct is employee behaviour that can lead to the employer taking disciplinary action. The following list contains some examples of misconduct: The list is not exhaustive.

- unauthorised absence
- poor timekeeping
- misuse of the Council's resources and facilities including telephone, email and internet
- inappropriate behaviour
- refusal to follow reasonable instructions
- breach of health and safety rules.

5. 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 contains some examples of gross misconduct: The list is not exhaustive

- bullying, discrimination and harassment
- incapacity at work because of alcohol or drugs
- violent behaviour
- fraud or theft
- gross negligence
- gross insubordination
- serious breaches of council policies and procedures e .g. the Health and Safety
- Policy, Equality and Diversity Policy, Data Protection Policy and any policies regarding the use of information technology
- serious and deliberate damage to property
- use of the internet or email to access pornographic, obscene or offensive material
- disclosure of confidential information.

6. Suspension

- If allegations of gross misconduct or serious misconduct are made, the Council may suspend the employee while further investigations are carried out. Suspension will be on full pay. Suspension does not imply any determination of guilt or innocence, as it is merely a measure to enable further investigation.
- While on suspension, the employee is required to be available during normal hours of work in the event that the Council needs to make contact. The employee must not contact or attempt to contact or influence anyone connected with the investigation in any way or to discuss this matter with any councillor.
- The employee must not attend work. The Council will make arrangements for the employee to access any information or documents required to respond to any allegations.

7. The Procedure

- Preliminary enquiries. The Council may make preliminary enquiries to establish the basic facts of what has happened in order to understand whether there may be a case to answer under the disciplinary procedure.
- If the Council believes there may be a disciplinary case to answer, the Council may initiate a more detailed investigation undertaken to establish the facts of a situation or to establish the perspective of others who may have witnessed misconduct.
- Informal Procedures. Where minor concerns about conduct become apparent, it is the Line Manager's responsibility to raise this with the employee and clarify the improvements required. A file note will be made and kept by the Line 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 Line Manager may decide to formalise the discussions and invite the employee to a first stage disciplinary hearing.

8. Disciplinary investigation

8.1 A formal disciplinary investigation may sometimes be required to establish the facts and whether there is a disciplinary case to answer.

8.2 If a formal disciplinary investigation is required, the Council will appoint an Investigator who will be responsible for undertaking a fact-finding exercise to collect all relevant information. The Investigator will be independent and will normally be a councillor. The Council 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.

8.3 The Investigator will be asked to submit their findings within 20 working days of appointment where possible. In cases of alleged minor misconduct, the appointment of an investigator may not be necessary and the Council may decide to commence disciplinary proceedings at the next stage - the disciplinary meeting (see paragraph 22).

8.4 The Council 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 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 will 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.

8.5 The employee may be accompanied or represented by a companion or trade union representative at any investigatory meeting.

8.6 If there are other persons (e.g. 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.

8.7 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 or not disciplinary action should be considered under the policy.

8.8 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 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 a formal hearing should be convened under the Council's disciplinary procedure.

8.9 The Investigator will submit the report to the Council which will decide whether further action will be taken.

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

9. The disciplinary meeting

9.1 If the Council decides that there is a case to answer, it will appoint a committee of three councillors to formally hear the allegations. The committee will appoint a Chair from one of its members. The Investigator shall not sit on the committee.

9.2 No councillor with direct involvement in the matter shall be appointed to the committee. The employee will be invited, in writing, to attend a disciplinary meeting. The committee's letter will confirm the following:

- the names of its Chair and other two members
- details of the alleged misconduct and its possible consequences

- a copy of the information provided to the 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 he /she has sufficient 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 two working days before the meeting
- that the employee may be accompanied by a companion or a trade union representative

9.3 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 committee 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 his/her case and present evidence (including any witnesses and/or witness statements)
- any member of the committee and the employee (or the companion) may question the Investigator and any witness
- the employee (or companion) will have the opportunity to sum up

9.4 The Chair will provide the employee with the committee's decision with reasons, in writing, within five working days of the meeting. The Chair will also notify the employee of the right to appeal the decision.

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

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

(i) First written warning

If the employee's conduct has fallen beneath 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 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).

(ii) Final written warning

If the offence is sufficiently serious, or if there is further misconduct 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
- that further misconduct 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).

(iii) 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, 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 committee 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.

10. The appeal

10.1 A n 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 receiving written notice of the disciplinary action and must specify the grounds for appeal.

10.2 The grounds for appeal include:

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

10.3 Where possible, the appeal should be heard by a panel of three members of the Council who have not previously been involved in the case. This includes the Investigator. However for a small employer like the parish council this may not be possible. Under ACAS Guidelines for small Employers, if an organisation only has the same managers available to conduct an Appeal as held the disciplinary, it would be appropriate for those three managers

to do so. They would need to be able to demonstrate that they had conducted the Appeal in as impartial a manner as possible under the circumstances.

10.4 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 or a trade union representative.

10.5 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.

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

10.7 The Chair will inform the employee that he/she will receive the decision and the panel's reasons, in writing, usually within five working days of the appeal hearing.

10.8 The appeal panel may decide

- to uphold the disciplinary decision of the committee
- substitute a less serious sanction
- 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.

10.9 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.

10.10 The appeal panel's decision is final.

Policy agreed on: 3rd October 2024

Next review date: October 2025