

NETHERWITTON PARISH COUNCIL

DISCIPLINARY PROCEDURE

Approved 21st October 2020

1. Background

- 1.1 This procedure is intended to ensure that all employees, irrespective of race, gender and/or disability are treated fairly and consistently. Whilst the ultimate sanction of dismissal can be applied for continuous misconduct (or gross misconduct), it is also an intention of the procedure to bring the consequences of misconduct or poor performance to the attention of the employee(s) concerned, so that they can improve their conduct and avoid dismissal.

2. Scope

- 2.1 The following procedure applies to all employees within Netherwitton Parish Council.

3. Principles

- 3.1 The primary objective of Netherwitton Parish Council's Disciplinary Procedure is to encourage employees to improve and correct unacceptable behaviour or conduct rather than simply punish employees.
- 3.2 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.
- 3.3 At every stage during the disciplinary procedure, the employee will have the right to be accompanied by a representative, who could be an accredited trade union representative or a work colleague. The employee will be informed of this right in the letter requesting their attendance at meetings held under the procedure and again at the commencement of any meeting.
- 3.4 Whenever possible, the date and time of any hearing should be mutually agreed by all parties, including the chosen representative.
- 3.5 No disciplinary action will be taken against an employee until the case has been fully investigated and the disciplinary action will be reasonable in the circumstances.
- 3.6 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty might be summary dismissal without notice and without payment in lieu of notice.
- 3.7 Employees will be provided with a written decision which will explain the disciplinary action being taken and set out the improvement or standard required. An employee will have the right to appeal against any formal disciplinary penalty imposed.
- 3.8 As far as practicable, the aim is to deal with issues as thoroughly and promptly as possible.

- 3.9 Normally, no action under this procedure, including suspension will take place in respect of an officer who is an accredited representative of a trade union, and whose status has been notified to the authority in writing, until the circumstances of the case have been discussed with a full-time official of the trade union concerned.

4. Investigation

- 4.1 When a potential disciplinary matter arises, the Chairman of the Council (or Vice-Chairman in the Chairman's absence), will arrange for an investigation to take place, including an investigatory interview with the employee concerned. This should be done as quickly as possible in order to establish the facts before recollections and memories fade. Where feasible, the Investigating Officer responsible will be assisted by a representative from the Human Resources Committee or another person with appropriate experience of disciplinary investigations. Written notes of any meetings that take place will be made which will be used for possible reference later.
- 4.2 Having thoroughly investigated the facts, the investigating officer will be expected to come to a decision regarding the allegations, facts and other matters established during the investigation. This could involve a recommendation that the matter be dropped entirely, that it be referred to an informal hearing or that it should be referred to a formal disciplinary hearing. In the latter situation, a report will be prepared summarising the information and evidence obtained and the conclusions and recommendations for further action under Netherwitton Parish Council's disciplinary procedure.
- 4.3 If the employee is accused of an act of gross misconduct, and it is felt inappropriate for the individual to remain at work because it might jeopardise the investigations or give concern for safe working practices, they will be suspended from work on normal pay, usually for no more than 10 working days whilst the alleged offence is investigated. The suspension will be kept under review. The provision for suspension is not, in itself, to be regarded as a disciplinary action and does not involve any prejudgement. (Whether the employee is suspended or not must not be taken as an indication that any misconduct will, or will not, be deemed to be gross misconduct.

5. Informal Action

- 5.1 There will be occasions when an employee's misconduct, breach of rules or unsatisfactory performance will be regarded as minor. In such cases, the Line Manager or Chairman will meet with the employee confidentially to outline where improvement is required. Such counselling may be confirmed in writing.

6. Formal Disciplinary Action

- 6.1 Before any disciplinary hearing, the employee will be provided with full information of the allegations including the report of the Investigating Officer, witness statements and all relevant evidence/documents in good time to enable them to consider these with their representative prior to the hearing. This should not be less than 5 working days. The employee will be advised of the right to be accompanied at the hearing.
- 6.2 Any information to be relied upon by the employee at the hearing should normally be disclosed to the Presiding Officer (i.e. the senior person from the Council who is to chair the disciplinary hearing), no less than 2 working days before the meeting.
- 6.3 At the hearing, the procedure will be that the Investigating Officer will present the results of the investigation before the employee and present any witnesses. The employee will be entitled to ask questions of the Investigating Officer and the witnesses. The employee will then be able to present their own case either themselves or through their representative and call any further witnesses. The employee will be required to respond to questioning by the Investigating Officer and the Presiding Officer at the hearing. All information placed before the Presiding Officer will be put in the presence of the employee and, if necessary to adjourn the hearing and reconvene for further information, the same principle will apply.

7. Levels of Disciplinary Action

7.1 Stage 1 Warning – Verbal

This is the lowest form of disciplinary action under the disciplinary procedure. If conduct or performance does not meet acceptable standards the employee will normally be given a stage 1 warning.

This level warning may be given by the appropriate Line Manager. It will be a verbal warning and will be noted on the employee's employment record.

7.2 Stage 2 Warning – Written

Where an offence is serious, or if a further offence occurs (which need not necessarily be of the same nature), whilst a stage 1 warning is still in force, the employee will be given a stage 2 warning.

7.3 Final Warning

This is the most severe warning that can be given under the disciplinary procedure. Such a warning may be issued in one of the following situations:

- i. Whilst a stage 2 warning is in force, there is a failure to improve and conduct remains unsatisfactory;
- ii. The misconduct is sufficiently serious, taking into account mitigating circumstances, to warrant only one formal warning, but sufficiently serious to justify dismissal (in effect both first and final warning). In these circumstances a final warning will normally be given to the employee; or
- iii. The misconduct is found to amount to gross misconduct but where mitigating circumstances are present such that the Presiding Officer does not deem it appropriate to dismiss the employee summarily (See 7.7 below).

7.4 Dismissal

If, whilst a final warning is still in force, conduct or performance remains unsatisfactory and the employee still fails to reach the prescribed standards, this will normally result in dismissal.

This action may be taken only by the Chairman of the Council on the authority of the Council.

7.5 Gross Misconduct

An employee may be dismissed without the operation of the above warnings procedure if an offence is deemed to be gross misconduct.

If, on completion of the investigation and the subsequent disciplinary hearing, the Presiding Officer is satisfied that the employee has committed an act of gross misconduct, the result will normally be summary dismissal, without notice or any payment in lieu of notice.

7.6 Examples of Potential Gross Misconduct

The following list provides examples of offences, which are normally regarded as gross misconduct, although each case will be considered on its own particular merits and circumstances:

- i. Theft, fraud, deliberate falsification of records;
- ii. Fighting, assault or threats of violence against another person;
- iii. Deliberate and serious damage to Council property;
- iv. Serious incapability through alcohol or being under the influence of illegal drugs, with regard to any specific policies in place;
- v. Serious negligence which caused unacceptable loss, damage or injury;
- vi. Serious act of insubordination;
- vii. Serious discrimination or harassment against another employee, customer or service user;

- viii. Unauthorised entry to computer records;
- ix. Deliberately accessing internet sites containing offensive or obscene material;
- x. Serious breach of the Council's policy on use of the internet;
- xi. Bringing the Council into serious disrepute;
- xii. A serious breach of health and safety rules;
- xiii. Serious breach of the official Code of Conduct for Local Authority employees or that of Vale Royal Borough Council;
- xiv. Disclosure of confidential information that could potentially seriously prejudice the interests of the Council.

This list provides examples only and is not exhaustive. It is impossible to anticipate every situation where gross misconduct may occur or to prescribe that on every occasion one of the cases listed above occurs, it will be judged to be gross misconduct.

7.7 Other Forms of Disciplinary Action as an alternative to Dismissal

In the case of serious or repeated offences where it is decided that mitigating circumstances indicate that dismissal is not appropriate, it may be appropriate for additional disciplinary action to be taken in addition to a final written warning. Appropriate action may include demotion or suspension without pay for a period not exceeding 10 working days. The Chairman or Vice-Chairman will have authority to impose such action.

7.8 Notification of the result of the Disciplinary Hearing

The results of all disciplinary hearing will be confirmed in writing to all parties, including any representative, stating the employee's right of appeal, and giving:

- i. The disciplinary action that has been taken (or not taken, as appropriate);
- ii. The reason(s) why;
- iii. The timescale within which improvement is required;
- iv. The consequences if there is no satisfactory improvement or further misconduct occurs.

8. Time Limits for Warnings

- 8.1 Subject to satisfactory conduct and performance, the time periods that must elapse before warnings are regarded as 'spent' are as follows:

- i. Stage 1 Warning - six months
- ii. Stage 2 Warning - one year
- iii. Final Warning - one year

The time period of the warning commences from the date of issuing of the warning.

'Spent' warnings will not normally be used to determine the disciplinary action that will result from any future act of misconduct.

9. Appeals

9.1 An employee who wishes to appeal against the formal disciplinary action taken under the Disciplinary Procedure must write to the Chairman of the Council, to be received within 5 working days of receiving written confirmation of the disciplinary action, stating the reasons for the appeal, which may fall within one or more of the following categories:

- i. The disciplinary sanction imposed is considered excessive for the nature of the offence/misconduct which took place or inconsistent with the treatment that has applied to other employees in similar circumstances;
- ii. Insufficient consideration was given by the Presiding Officer at the disciplinary hearing to the particular mitigating circumstances of the employee; or
- iii. The disciplinary hearing did not take into account or was not aware of significant items of information or evidence before reaching its decision.

APPENDIX A1

Disciplinary Appeals

1. An employee who wishes to appeal against any formal disciplinary action must write with their reasons to the Chairman of the Council within 5 working days of receiving the written decision regarding their wish to appeal. Receipt of the appeal will be acknowledged within 2 working days.

Stage 1

2. The appeal will be considered by a member of the full Parish Council not previously involved in the matter. The appeal hearing will take place at the earliest practicable opportunity, normally within 15 working days of the receipt of the appeal notification. The employee may be accompanied by an accredited trade union representative or a work colleague.

ANNEXE TO APPENDIX A1

Procedure for Disciplinary Hearing or Stage 1 Appeal

1. The hearing will be heard by a panel comprising of 3 members of the Parish Council with a professional advisor.
2. The Investigating Officer will put the case in the presence of the employee and their representative and may call witnesses.
3. The employee (or their representative) will have the opportunity to ask questions of the Investigating Officer and any witnesses who are called by that person.
4. The Investigating Officer will have the opportunity to re-examine witnesses.
5. The panel may ask questions of the Investigating Officer and witnesses.
6. The employee (or their representative) will put their case in the presence of the Investigating Officer and may call witnesses.
7. The Investigating Officer will have the opportunity to ask questions of the employee and any witnesses.
8. The employee (or their representative) will have the opportunity re-examine witnesses.
9. The panel may ask questions of the employee and any witnesses.
10. Witnesses will only stay in the room whilst they are giving evidence or are being questioned. They will leave the room as soon as they have finished.
11. The Investigating Officer and the employee (or their representative) may sum up their cases if they so wish.

12. The Investigating Officer, the employee and their representative and any witnesses will withdraw.
13. The panel will consider the facts in private, only recalling the Investigating Officer and the employee (or their representative) to clarify points of uncertainty on evidence already given. If recall is necessary, both parties are to return notwithstanding that only one is concerned with the point giving rise to doubt.
14. The panel will announce the decision to the parties orally or in writing as may be determined. An oral announcement will be confirmed in writing in 5 working days.