

POULTON WITH FEARNHEAD PARISH COUNCIL

DISCIPLINARY AND GRIEVANCE PROCEDURE

PROCEDURE

The disciplinary procedure comprises the following stages, where applicable:

- Informal Stage (where appropriate)
 - o Informal Resolution
- Formal Stages
 - o Investigation (including suspension where necessary)
 - o Hearing
 - o Sanctions
 - Formal Stage 1 - Written Warning
 - Formal Stage 2 - Final Written Warning
 - Formal Stage 3-Dismissal with Notice or Summary dismissal
 - Additional Sanctions may be added to the above warnings in exceptional
 - o Appeal. circumstances: as alternatives to dismissal, sanction appropriate to the offence.

No formal disciplinary action will be taken against an employee until the circumstances have been fully investigated. Employees 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 of the procedure the employee will have the right to be accompanied by a workplace colleague or trade union representative. An employee will have the right to appeal against any disciplinary sanction imposed

Raising a Grievance during the Disciplinary Process

Where an employee raises a grievance during a disciplinary process, not relating to the disciplinary matter, the disciplinary process may be suspended to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both cases concurrently.

Resignation during an investigation or before a Disciplinary

If the employee, resigns either during a disciplinary investigation or prior to a disciplinary hearing then the Council will reserve the right to continue with the investigation and/or hearing despite the resignation.

The results of any findings/decision will be held on the employee's personnel file and any appropriate actions taken in line with the Disciplinary policy.

Meeting with Vulnerable, Disabled, Special or other groups

- Within a disciplinary process, vulnerable individuals will only be interviewed or asked to attend meetings in the presence of a Companion.
- Reasonable adjustments will be made for special groups or employees who have a disability. in accordance with the Equality Act 2010 for example providing wheelchair access for a disabled employee.
- Cultural and/or gender issues should also be given consideration

Criminal Conviction/Imprisonment

An employee who receives a criminal conviction or imprisonment may be dismissed, however each case will be determined on its own merit. The Council's Disciplinary Policy, including undertaking an internal investigation, will be followed on all occasions.

Informal Stage

Over day-to-day activities there will be occasions when managers/the Council will need to advise employees informally of minor breaches of discipline/conduct. In some situations, providing guidance and counselling on an informal basis can be a more appropriate method of resolving issues than proceeding to formal discipline. The advantage of this approach would be to resolve the problem under consideration or correct the inappropriate behaviour as quickly as possible to reduce the risk of disruption of a team, de-motivation and absenteeism for example.

At informal stage meetings the manager/the Council should:

Investigate the circumstances. Set the standard of expected behaviour and conduct required

Training needs may be identified, and a programme of learning and development may be implemented, with consultation and support from appropriate training resources. The timescale for this training programme will depend on individual circumstances of each case

Set out the consequences of any further proven misconduct

Set a reasonable period for the employee to demonstrate good conduct or proper behaviour

Monitor continuously and give feedback to the employee

Warn the employee that failure to achieve the required standards of behaviour/conduct will lead to the formal part of the Disciplinary Procedure being implemented

The manager/the Council will take notes of the meetings, including any agreed actions as, should the behaviour or conduct continue and move to Formal Disciplinary Procedure, these records will be important evidence. Whilst the employee should be made aware that brief notes have been taken, they should also be advised that they are for the manager's record only at this stage and that they will be kept confidential but remain in place for a period of 6 months. The Manager/the Council will confirm the outcome in writing.

Formal Procedures

1. Authority to Act

The Council will take the decision on whether to launch a disciplinary investigation (taking professional advice as appropriate) and will appoint the Investigating Officer. The Council will also authorise any suspension of an employee where deemed appropriate.

The investigating officer will be responsible for investigating the disciplinary allegation and preparing a report with their findings.

The Disciplinary Panel will decide on whether a person is guilty of a discipline offence having considered evidence supplied by the investigating officer and the employee.

Managers involved in disciplinary processes as investigating officers will, from time to time, receive training in relevant skills to ensure their ongoing competency to deal with disciplinary issues.

- In exceptional circumstances it may be appropriate to bring in an external independent party to conduct some aspect of the disciplinary process. The Council reserves the right to make this decision if the circumstances are appropriate and to ensure there is complete objectivity and transparency in the process.

2. Investigation Process

When a potential disciplinary matter is identified (which is more serious than that which would be dealt with informally), an Investigating Officer will be nominated by the Council. The employee will be given a letter confirming that an allegation has been made against them, details of the allegation; that there is to be an investigation and who is the investigating officer. In the majority of cases such written confirmation will be issued at the commencement of an investigation but in some cases e.g. potential fraud (or where evidence is behaviour based and evidence needs to be collected before the person is informed e.g. attendance), it may be appropriate not to inform the employee at the commencement of the investigation. Investigations may require the interviewing of third parties and witnesses to gather evidence and provide contextual information. In these circumstances the employee will be informed as soon as practicable.

Investigation meetings are not disciplinary hearings and employees do not have the statutory right of representation; however, the Council will offer employees the opportunity of being accompanied by a companion on all occasions. Guidance on the role of a companion is given later in this policy.

The Investigating Officer will investigate the matter, interview witnesses, and gather documentary evidence as appropriate, then prepare a report giving the outcome of the investigation and make one of the following recommendations to the Council either

- That no further action to be taken or
 - o That Informal Action may be required: e.g. counselling, keeping under review, management action, training etc. or
 - o That a disciplinary hearing should be held

Once the findings of the investigation have been presented to the Council, they will determine whether they are in agreement with the findings of the Investigating Officer and what action will be taken as appropriate and in line with the Council's Disciplinary procedure.

The employee will be advised of the outcome in writing.

3. Suspension from Work

The Council may decide to suspend an employee from work pending the investigation. Suspension is most likely to be appropriate where the continued presence of the individual at work would pose a risk to themselves or others or where the employee would have an opportunity to frustrate the investigation by destroying or compromising evidence. As an alternative to suspension, it may be considered more appropriate to request the employee to undertake alternative duties which remove them from their normal workplace or to work from home whilst the investigation is conducted.

Suspension is not disciplinary action. Any such suspension will be with pay and the duration will vary according to the situation, but timescales will be as short as reasonably possible. The employee will be given a letter explaining the reason for suspension, will be required to hand in any door passes and keys for working premises and will not have access to the Council's computers for the duration of the suspension. They will also be made aware that they must be available to take calls or attend work for investigation meetings, at short notice.

4. The Disciplinary Hearing

If the Council accepts a recommendation to proceed to a full disciplinary hearing this will be convened in accordance with the arrangements described below.

The intention of the Hearing is to give the employee every opportunity of stating their case and to allow the Disciplinary Panel to consider all relevant information before making a final decision.

The employee will be notified in writing at least 5 working days before the Hearing takes place, this notice may be extended to allow an employee to be represented.

The notification will include:

- the fact that there will be a Hearing held under the Council's disciplinary procedure
- the reason for the Hearing
- the date, time, and place of the Hearing
- the right of the employee to be accompanied
- an indication of who are expected to be three Councillors on the Disciplinary Panel
- the reason why the employee's conduct is thought to warrant disciplinary action, supported by documentary evidence and witness statements
- an offer of external support/counselling.

Any information to be presented at the Hearing by either side should be available to all parties at least 5 working days in advance of the Hearing meeting.

Every effort is made to arrange the timing of a hearing, such that it is suitable for all involved parties. However, it should be noted that where an employee is persistently unable or unwilling to attend a disciplinary meeting, the Council will have no option than to make a decision based on the evidence available.

- Sickness may be a reason given for non-attendance but is only valid if the employee is genuinely too ill to attend a formal meeting or disciplinary hearing. An employee may be too sick to work but fit enough to attend such a meeting. An occupational health referral must take place if the employee is certificated as sick by their general practitioner or specialist. A hearing can take place in the employee's absence or the employee can nominate a representative to attend on their behalf.

Once all the evidence has been provided to the Disciplinary Panel, the meeting will ordinarily be adjourned whilst the Disciplinary Panel reaches a decision. The length of the adjournment will be agreed at the Hearing meeting, although should be kept to a minimum.

The outcome of the Hearing will be conveyed as soon as possible. If it is not possible to confirm the outcome on the same day, the employee will be given an anticipated time scale for confirmation of the outcome and a subsequent meeting will be arranged to convey the decision. The decision will then be confirmed in writing.

5 Formal Stage 1 - Written Warning

If, following a disciplinary Hearing meeting it is concluded that an employee's conduct is unsatisfactory and amounts to misconduct, the employee will be issued with a Formal Written Warning. A letter will be sent to the employee giving the reason for the warning, explaining what improvements are required and their rights of appeal. The letter will also explain the potential consequences of any further offence. The letter will usually be sent within 5 working days of the disciplinary meeting wherever possible but without unreasonable delay.

The employee will also be informed that a copy of the notice of Formal Written Warning will be held on their personnel file, both hard copy and electronic, in accordance with The Data Protection Act. It will remain in force for a period of 12 months and will ordinarily be considered spent after this time, subject to no further disciplinary incidents occurring during this period.

6. Formal Stage 2-Final Written Warning

This sanction may be issued if the first offence is serious enough to warrant action at this level. Alternatively, it may be issued after a Written Warning depending on the severity of any subsequent misconduct or the failure to achieve required standards of performance/conduct.

The employee will be issued with a Final Written Warning and this will be notified to them in writing, giving the reason for the warning and explaining what improvements are required and their rights of appeal. This will usually be sent within 5 working days of the disciplinary meeting wherever possible but without unreasonable delay.

The employee will also be informed that a copy of the notice of Final Written Warning will be held on their personnel file, both hard copy and electronic, in accordance with The Data Protection Act. It will remain in force for a period of twenty-four months and will ordinarily be considered spent after this time, subject to no further disciplinary incidents occurring during this period.

7. Formal Stage 3-Dismissal with Notice or Summary dismissal

Dismissal will normally be contemplated where either an employee has previous warnings or a further finding of misconduct is made against them or where the offence amounts to gross misconduct.

Where further serious misconduct follows previous warnings, an employee may be dismissed with notice.

If, after investigation, an employee is found to have committed an act of gross misconduct, the normal consequence will be summary dismissal.

The employee will be given written reasons for dismissal, the date of termination of their employment, and notice of the right to appeal.

In exceptional circumstances substantial mitigation may exist and a final written warning is given as an alternative to dismissal

8. Additional Sanctions

Alongside formal sanctions, additional sanctions, may be considered at the absolute discretion of the Council and in exceptional circumstances and provided that the employee (after full consultation with their representative) agrees to this exceptional course of action.

Where formal written warnings are issued because of a disciplinary hearing the Council may also apply additional sanctions. The Council may use one or more of the following, depending on the circumstances:

- Suspension for a period without pay
- Loss of increment
- Recovery of costs.
- Temporary cessation of pay,

These alternatives, short of dismissal, mentioned above are not exhaustive and the Council reserves the right to take any action it considers reasonable and appropriate in the circumstances.

9. Right of Appeal

The employee has the right to appeal at all formal stages of the procedure. There will not be a delay in implementing management decisions pending an appeal, but they may be subsequently amended because of the appeal hearing.

- Appeals must be lodged in writing, clearly stating the grounds for appeal, with the Chairperson of the Council as soon as possible, without unreasonable delay but within 10 working days of receipt of the letter advising what formal action has been taken.
- The appeal hearing will normally take place within 20 working days of receipt of the letter or without unreasonable delay, dependent on the availability of Councillors
- The employee has the same right of representation at an appeal meeting as during the formal stages of the procedure.
- To ensure impartiality, the appeal will be heard by three different Councillors from those previously involved in the Disciplinary meeting(s)
- Following the appeal meeting the employee will be sent a letter advising the outcome of the appeal. This will be sent without unreasonable delay, usually within 5 working days.

This is the final stage of the formal Disciplinary Procedure.

The Right to be accompanied: The role of the companion

The employee has a statutory right to be accompanied to disciplinary hearings under this procedure either by a Trade Union representative or a workplace colleague. There is no statutory right to be accompanied to investigatory meetings, but the Council has decided that anyone attending any meetings under the formal procedure will be permitted to have a companion if they so wish. Family members and friends are specifically excluded unless they happen to be a trade union representative or colleague.

When choosing a companion, the employee should avoid nominating someone whose presence may prejudice the hearing or who might otherwise have a conflict of interest.

- A person requested by an employee to accompany them does not have to do so. However, where a person does agree to accompany an employee to their disciplinary meeting the companion will be permitted reasonable paid time off work to do so.
- Anyone who agrees to accompany an employee must be aware that anything they see or hear during the meeting(s) must remain confidential and must not be discussed with any third party.
- Where the employee's chosen companion is not able to attend on the date agreed for the disciplinary meeting, an alternative date should be proposed by the employee, this would normally be within 5 days from the date the disciplinary meeting was arranged. As far as reasonably possible, the location and timing of any meeting will be convenient to the employee, the companion, and the manager.

The companion will be allowed to address the disciplinary meeting to put forward and sum up the employee's case, respond on behalf of the employee to any views expressed during the meeting and confer with the employee during the meeting. The companion does not, however, have the right to answer questions on behalf of the employee, address the meeting if the employee does not wish it or prevent the Chairperson of the Disciplinary Panel explaining the case. An exception will be made in special circumstances such as situations where a person has difficulty in conducting their own case because of their disability or because their first language is not English.

The Council can reject an employee's choice of companion, in exceptional circumstances, (including Trades Union Representative) if it is unreasonable for him or her to request to be accompanied by that person. This may be the case, for example, if the companion is involved in the proceedings, or because he or she will not be available for a meeting for a substantial length of time.

RECORDS

It is important to keep written records during each part of the disciplinary process. These records will include:

- details of the alleged misconduct
- the Council's response
- action taken

- reasons for action taken
- copies of all file notes from the Hearing and if applicable appeal meetings
- copies of all letters in relation to the employees alleged misconduct

All records will be kept confidential and retained on the employees personnel file, both electronic and hard copy, in accordance with the Data Protection Act.

Copies of the Formal Stage Warnings will be held on file as detailed below and will be considered as 'spent' after this time providing conduct and/or performance is satisfactory:

- Formal Written Warning-12 months
- Final Written Warning-24 months

Review of Procedure

The Procedure can be adjusted or amended by the Parish Council at an authorised meeting of Councillors