

TATTENHALL & DISTRICT PARISH COUNCIL

Grievance & Disciplinary Procedures

Grievance Procedure

PURPOSE AND SCOPE

It is the policy of the council to give employees the opportunity to air and seek redress for any individual employment grievance which they may have. Grievances may be any concerns, problems or complaints employees wish to raise with the council. It is hoped that most routine complaints or grievances are best resolved informally in discussion with the Chairman.

This document describes the procedure which aims to facilitate a speedy, fair and consistent solution to an individual employee's employment grievance. This procedure is produced in line with the ACAS Code of Practice 2009 as set out in the Employment Act 2008.

PRINCIPLES

- a) At every stage in the procedure the employee will be given the opportunity to state his or her case before any decision is made.
- b) Grievances will be dealt with promptly and consistently
- c) At all formal stages the employee will have the right to be accompanied by a work colleague (inc. other Parish Council Clerk) or trade union representative during the Grievance Hearing.
- d) An employee will have the right to appeal against any outcome of a Grievance Hearing.
- e) At no time will an employee be penalised or victimised for having raised a Grievance against the council

PROCEDURE

1 Wherever possible, any grievance should be raised informally with the employee's line manager, or if this is inappropriate with the next level of management. In the case of the Clerk to the council raising a grievance this should be directed to the Chair of the council unless the complaint is about the Chair in which case another Member can be identified to handle the Clerk's concerns. The recipient of the grievance from a Clerk should share the grievance with the Council and the issues should be treated with discretion and confidentiality at all times.

2 Written Statement: If the employee does not consider it appropriate to raise the grievance informally, or if requested by the person the employee spoke to informally, then the employee should submit a formal grievance in writing to their line manager, or the chairman as appropriate.

3 Meeting or Hearing: Generally, within a reasonable period of time e.g. five working days of receipt of a written complaint, the line manager or Chair of the Council will arrange a meeting with the employee who will endeavour to make the meeting arrangements mutually convenient and will arrange a confidential location, free from interruptions. The Chairman may conduct an investigation in advance of this meeting. At the meeting the Chairman will review the substance of the complaint and hear submissions from the employee concerned together with such other submissions or evidence as s/he shall consider appropriate and take such steps as s/he shall consider necessary to resolve the issue raised. It may be necessary to adjourn the meeting in order for any further investigations to take place. Careful consideration of the evidence and the necessary steps required to resolve the problems will be given to the grievance. The employee

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may call witnesses by prior arrangement with the panel. There is no right for a Member or employee implicated in an employee's grievance to cross examine the aggrieved during a grievance hearing but the Council may wish to make its own investigations through interviewing these individuals and/or other witnesses separately. The Council may ask the employee what he or she would like to happen as a result of raising the grievance and bear this in mind when preparing the response.

4 Response: The Chair will advise the decision to the employee in writing, usually within 7 to 10 days of the meeting or hearing and, where appropriate, include an action plan to assist in the resolution of the problem.

It should be noted that Councils which handle internal disputes effectively generally consider the options and costs in a timely fashion, then agree and publicise the workable solutions, monitor, review and learn from the experience. It may be appropriate to seek advice/mediation form an outside body.

5 Appeal: If the employee is dissatisfied with the decision of the line manager on his/her complaint, s/he may appeal against the decision to the Chair or any other elected Member by written notice within five working days of the decision. Note: The employee must appeal to another elected member if The Chair was involved in the original decision.

An Appeal may be raised if:

- The employee thinks the finding, or action plan, is unfair
- New evidence has come to light
- The employee thinks that the procedure was not applied properly

On receipt of the appeal the council will convene an Appeals Panel who will hear the appeal, the Appeals Panel may consist of between 1-3 Members. An Appeal Hearing Chair will be appointed, and they shall consider the issues and shall take all such steps, as s/he may consider necessary to resolve those issues. Where the council's Chair has chaired the initial grievance meeting the Vice Chair or other elected member will hear the appeal. The council will need to ensure that the Members involved in the hearings are able to act impartially and reasonably at all times. The Appeals Panel shall arrange to meet and consult with the employee, the line manager or Members concerned and any other persons, as they shall consider appropriate without unreasonable delay. The decision of the Appeal Hearing will be final and the outcome of the appeal should be conveyed to the employee in writing within 5 days of the hearing.

6 Bullying or Harassment: If a grievance concerns alleged bullying or harassment the matter should be reported promptly to the employee's Line Manager, or Chairman, with an indication of the required action. The complaint will then be investigated, and any action taken and any resolution achieved will be reported back. If the solution is not satisfactory to the complainant, the matter will be discussed further and, if appropriate, an alternative solution agreed. The decision at this stage will generally conclude the enquiry. If a further appeal or review is available the employee will be notified. As a result of an investigation into a claim of harassment disciplinary action may be instigated against any alleged perpetrators of the action or in the case of alleged

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perpetrators being elected Members a Code of Conduct complaint lodged by the council through the Standards process with Cheshire West and Chester Council.

Refer to the Dignity at Work/Bullying and Harassment Policy for further details

7 Right to be Accompanied: At any formal stage of the procedure an employee may be accompanied by a fellow employee (inc. other Parish Council Clerk) of their choice or their trade union representative or official of a trade union (appropriately accredited) but as this is an internal procedure they will not be entitled to be accompanied by any external supporter e.g. partner, parent, solicitor etc. This right to be accompanied is enshrined in the Employment Relations Act 1999. To exercise this right the employee should make a reasonable request. The companion will be allowed to address the hearing, put and sum up the employee's case, respond to views expressed at the hearing and to confer with the employee during the hearing (sometimes in an adjournment) but is not allowed to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case.

8 Hearing Panels

It is advised that councils establish hearing panels to hear disciplinary and grievance hearings on an annual basis 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 are implicated in the dispute or have undertaken an investigatory role then they will need to be substituted as panel members.

9 Confidentiality: So far as is reasonably practicable, the council will keep any grievance or complaint of harassment confidential between the manager or Member investigating the grievance or complaint, the employee and the person about whom the grievance or complaint is made. If it is necessary to investigate the matter with any other employee or person, the employee will be so advised.

10 Record Keeping: In all cases, written records of the nature of the grievance raised, the employer's response, action taken (with reasons), details of any appeal and subsequent developments will be retained and kept in accordance with the Data Protection Act 1998.

11 Grievances raised during Disciplinary

In some circumstances when a disciplinary process has commenced an employee chooses to exercise his/her right to raise an internal grievance about the employment relationship with the council or individual Members. The SLCC recommends, in line with ACAS advice, that disciplinary matters are placed on hold until grievances have been aired and actions towards a resolution have been progressed. In exceptional circumstances it is pragmatic to deal with the two disputes concurrently but SLCC would advise caution and specialist advice should be sought if this arises.

GETTING IT WRONG

Following the repeal of the 2004 Dispute Resolution regulations employees no longer HAVE to raise a grievance before going to an employment tribunal. However, establishing a mechanism

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for differences and disputes to be resolved internally can often allow the employment relationship to continue. Failure to follow the ACAS Code of Practice (available at www.acas.org.uk) when dealing with grievances can lead to an Employment Tribunal awarding an uplift of an award against the council of up to 25%. Tribunals dealing with constructive dismissal and discrimination claims are particularly interested in whether the employer followed a procedure when dealing with an internal dispute and whether the employer acted fairly and reasonably. One way in which to avoid such a penalty is to have an agreed procedure, communicate that procedure to staff and Members, revisit and review the procedure regularly and have some training for those who are expected to operate the procedure.

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Disciplinary Procedure

1. INTRODUCTION

This disciplinary procedure is designed to help and encourage employees to achieve and maintain acceptable standards of conduct and job performance at all times, including the need to: -

- Fulfil the duties specified in their contract of employment.
- Be honest and act beyond suspicion of dishonesty.
- Maintain high standards of integrity and conduct to protect the council's image and reputation with the public.

1.1 This policy indicates the disciplinary procedure that will normally be followed in the event of misconduct. The following list provides examples of conduct that will normally be regarded as misconduct leading to disciplinary proceedings. The list is not exhaustive. These are examples only:

- i. Unsatisfactory time keeping.
- ii. Absenteeism, including any absence from work during a working day without prior authorisation or instruction.
- iii. Failure to comply with rules and regulations applicable to job requirements.
- iv. Failure by an employee to perform the duties and responsibilities of his or her post to the standard expected by the council.
- v. Insubordination.
- vi. Minor breaches of policies
- vii. Damage to or unauthorised use of Council property
- viii. Any other conduct that from time to time is defined by the council as amounting to misconduct.

1.2 For first instances of minor misconduct the Chairman or Vice Chairman may speak to the employee informally before implementing a formal disciplinary procedure. However there is no obligation for the Chairman or Vice Chairman to do this.

2. SCOPE

The procedure applies to all employees of Tattenhall & District Parish Council.

3. FIRST WRITTEN WARNING

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In the case of a serious offence or misconduct that has not been able to be resolved by informal discussion, the employee will normally be given a First Written Warning. A First Written Warning will be issued by the Chairman and will set out:

- i. the nature of the offence and the improvement required (if appropriate) and over what period;
- ii. the likely consequences of any further offence or failure by the employee to improve his/her conduct to an acceptable standard;
- iii. that further offences will result in more serious disciplinary action; and
- iv. the employee's right of appeal.

A first Written Warning will normally remain in force for 6 months. After this period the warning will remain permanently on the employees personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

The First Written Warning stage of the procedure may be omitted if the offence is of a sufficiently serious nature.

4. FINAL WRITTEN WARNING

If further misconduct occurs within the time period specified in a First Written Warning, or if the misconduct is sufficiently serious the employee will be given a Final Written Warning. A Final Written Warning will be issued by the Chairman and will set out:

- i. the nature of the offence and the improvement required (if appropriate) and over what period;
- ii. the likely consequences of any further offence or a failure by the employee to improve his/her conduct to an acceptable standard;
- iii. that further offences will result in more serious disciplinary action up to and including dismissal; and
- iv. the employees right of appeal.

Final Written Warnings may also be issued in circumstances where the misconduct does not amount to gross misconduct, but is sufficiently serious enough to warrant only one written warning.

A Final Written Warning will normally remain in force for 12 months. After this period the warning will remain permanently on the employees personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

5. STANDARD COUNCIL DISCIPLINARY PROCEDURE

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- 5.1 In the case of further misconduct within the time period specified in any Final Written Warning or if the misconduct is sufficiently serious and the council deems it to be appropriate to contemplate the dismissal, demotion or suspension (without pay) of the employee the following formal disciplinary procedure will be followed.
- 5.2 The council will investigate the alleged misconduct and will establish the facts surrounding the complaint as necessary, taking into account the statements of any available witnesses. The employee will be invited to attend an initial investigation meeting to establish the facts and to consider whether to proceed to a disciplinary hearing. Investigative meetings are solely for the purposes of fact finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held. Employees generally do not have the right to bring a companion to an investigative meeting unless one is necessary to overcome any disability, or the employee has difficulty understanding English. The employee must co-operate fully in any investigation, disclosing relevant documents and names of any relevant witnesses.
- 5.3 Following the investigation if the Council considers there are grounds for disciplinary action, the employee will be required to attend a disciplinary hearing. The council will set out in writing the alleged conduct or other circumstances which lead the council to contemplate dismissing the employee or taking disciplinary action against the employee and the basis for the allegation and will send the employee a copy of the statement inviting the employee to attend a disciplinary hearing to discuss the matter. The employee will be provided with a reasonable opportunity to consider his or her response to the information provided in the statement before attending the hearing. The employee must take all reasonable steps to attend the meeting.
- 5.4 Disciplinary hearings will normally be convened within 5 working days of the council sending the employee the written statement referred to in 5.3 above. The employee may be accompanied to any disciplinary hearing by a fellow clerk or by a representative of a trade union. The council will be represented by the Chairman.
- 5.5 If the time or date proposed for the meeting is inconvenient (either for the employee or for the employees companion should he or she wish to be accompanied to the meeting pursuant to 6.4 above) the employee may ask to postpone the hearing by up to 5 working days.
- 5.6 The hearing may be adjourned to allow matters raised during the course of the meeting to be investigated, or to afford the Chairman time to consider their decision.
- 5.7 After the hearing the council will inform the employee of their decision and any applicable sanction within 5 working days. The meeting may be reconvened for this purpose. The decision will be confirmed to the employee in writing.
- 5.8 If the employee wishes to appeal against the decision he or she must notify the council in writing within 5 days of receiving written notice of the decision.
- 5.9 If the employee notifies the council that he or she wishes to appeal, the employee will be invited to attend a disciplinary appeal meeting before the Council's Staffing Committee. The employee must take all reasonable steps to attend that disciplinary appeal meeting. The employee has the right to be accompanied to a disciplinary appeal meeting by a fellow employee (inc. other Parish Council Clerk) or by a representative of a trade union.

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5.10 A disciplinary appeal meeting will normally be convened within 7 working days of the council receiving notification that the employee wishes to appeal pursuant to 6.8 above. If the meeting date is inconvenient for the employee or the employee's companion he or she may ask to postpone the meeting by up to [5] working days.

- i. Any new evidence that the employee wishes to put forward will be considered, as will any new evidence from the council. The original disciplinary penalty will be reviewed.
- ii. The disciplinary appeal sanction originally imposed cannot be increased upon appeal.
- iii. The disciplinary appeal meeting will not necessarily take place before any disciplinary sanction imposed by the council takes effect. If the employee's appeal is against dismissal and the appeal is successful, the employee will be reinstated and continuity of employment will be preserved.
- iv. The meeting may be adjourned to allow matters raised during the course of the meeting to be investigated, or to afford the Council's Staffing Committee time to consider its decision.

5.11 After the disciplinary appeal meeting the council will inform the employee of its final decision within 5 working days. The meeting may be reconvened for this purpose. The decision will be confirmed to the employee in writing.

6. COUNCIL DISMISSAL PROCEDURE FOR USE IN GROSS MISCONDUCT

6.1 The following list provides examples of conduct that will normally be regarded by the council as Gross Misconduct. This list is not exhaustive. These are examples only:

- i. Refusal or repeated failure by an employee to carry out his or her duties.
- ii. Dishonesty, Fraud including falsification of documents or information (including expense claims).
- iii. Unauthorised disclosure of confidential information.
- iv. Assaulting a fellow employee or any other person whilst acting or purporting to act on behalf of the council.
- v. Insulting, indecent or offensive behaviour towards a fellow employee or any other person whilst acting or purporting to act on behalf of the council.
- vi. Serious or repeated harassment (including sexual and racial harassment).
- vii. Incapacity at work due to the influence of alcohol, unprescribed drugs or any other substance.
- viii. Wilful damage to council property.
- ix. Theft, unauthorised use or possession of council property or theft of the property of a fellow employee.
- x. Serious breach of health and safety rules
- xi. Conviction of a criminal offense that in the Council's opinion may affect their reputation or relationships with Members, or the public or otherwise affects the employee's suitability to continue to work for the Council
- xii. Conduct bringing the council into disrepute.
- xiii. Any other conduct that from time to time is defined by the council as amounting to gross misconduct.

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6.2 If an employee is accused of any Gross Misconduct he or she may be suspended from work on full pay pending the outcome of an investigation into the alleged offence(s). Such a period of suspension will not normally exceed 10 working days unless there are exceptional circumstances.

6.3 The council will investigate the matter and will establish the facts surrounding the complaint as necessary, taking into account the statements of any available witnesses. As part of that investigation the employee will be interviewed.

6.4 If the council believes the employee is guilty of gross misconduct his or her employment will be terminated summarily without notice or pay in lieu of notice.

6.5 The council will send the employee a statement, setting out the allegations of misconduct that led to the employee's dismissal and the council's basis for thinking that the employee is guilty of that misconduct. The date on which the employment terminated will be confirmed to the employee and the employee may be reminded of any continuing obligations he or she may have following the termination of employment. This statement will also explain the employee's right to appeal against the council's decision.

6.6 If the employee wishes to appeal against the council's decision he or she must notify the council in writing within 5 working days of receiving notice of the council's decision pursuant to 7.5 above.

6.7 If the employee appeals the council will invite the employee to attend a disciplinary appeal meeting before the Council. The employee must take all reasonable steps to attend the meeting. The employee has the right to be accompanied to a disciplinary appeal meeting by a fellow employee or by a representative of a trade union.

6.8 Any disciplinary appeal meeting will normally be convened within 7 working days of the council receiving notice from the employee that he or she wishes to appeal pursuant to 7.6 above. If the date of the meeting is inconvenient for the employee or his or her companion the employee may ask to postpone the meeting by up to 5 working days.

- i. Any new evidence that the employee wishes to put forward will be considered as will any new evidence from the council. The original disciplinary penalty will be reviewed.
- ii. The disciplinary sanction originally imposed cannot be increased upon appeal.
- iii. The disciplinary appeal meeting will not necessarily take place before any disciplinary sanction imposed by the council takes effect. If the employee's appeal is against dismissal and the appeal is successful he or she will be reinstated and continuity of employment will be preserved.
- iv. The meeting may be adjourned to allow matters raised during the course of the meeting to be investigated, or to afford the Council time to consider its decision.

6.9 After the disciplinary appeal meeting the employee will be informed of the council's final decision within [5] working days [the meeting may be reconvened for this purpose]. The council's decision will be confirmed to the employee in writing.

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7. GENERAL PROCEDURAL INFORMATION

- 7.1 Written Warnings will normally be issued by the Chairman. Disciplinary proceedings raised under the standard council disciplinary procedure will also normally be investigated and any meetings to discuss the disciplinary proceedings conducted by Chairman.
- 7.2 Where disciplinary proceedings are instigated against the clerk or all employee relations matters are dealt with by the Council, Written Warnings will be given by the Chairman. Any investigations and any meetings will be carried out by a working group of the Council. Any disciplinary appeal meeting will be conducted by (3) members of the council who did not sit on the initial working group.

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