



Carn Brea Parish Council

Disciplinary Policy and Procedures

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Carn Brea Parish Council's Disciplinary Policy

Introduction

1. Introduction

This policy is designed to help and encourage all employees to achieve and maintain acceptable standards of conduct and job performance. The aim is to ensure consistent and fair treatment for the individual. It sets out the framework for resolving issues relating to misconduct and unsatisfactory performance in accordance with the Employment Rights Act 1996, Human Rights Act 1998 and the ACAS Code of Practice on Disciplinary Procedures.

This policy and procedures applies to all employees except where it conflicts with contractual or statutory requirements, which takes precedence.

2. General Principles

The policy is not a substitute for good management practices and should only be invoked when initial attempts to improve conduct have been made following discussions between the employee and their line manager. However, where there has been gross misconduct or a serious breach of disciplinary rules, the formal procedure should be actioned immediately.

No disciplinary action will be taken against an employee until the circumstances have been fully investigated.

The employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case at the appropriate stage.

In all instances of alleged misconduct, the employee will be given at least 5 working days' notice of the requirement to attend a hearing or appeal. 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 in their absence. An employee who does not attend a meeting will be given the opportunity to be represented and to make written submissions.

Any disciplinary action taken will depend on the nature of the offence, the past recorded behaviour of the employee concerned, the consequence to the Council of the offence, and any explanation presented by the employee.

Employees have the right to appeal against any disciplinary warnings and dismissal.

3. Representation

The employee has the right to be represented at a performance improvement review meeting, investigatory meeting, disciplinary hearing or appeals hearing by a workplace colleague, a trade union representative or a trade union official. 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.

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.

4. Roles and Responsibilities

Normally, the Clerk in communication with the Chairman of the Staffing Committee will consider minor misconduct or unsatisfactory performance informally and resolve them, if they can, without recourse to the formal procedure.

In the case of minor misconduct of the Clerk, the Chairman of the Staffing Committee will consider informally resolving them, if they can, without recourse to the formal procedure.

If informal action does not bring about an improvement, or the misconduct or unsatisfactory performance is considered too serious to be cases classed as minor, the Clerk will report to the Staffing Committee to make appropriate arrangements regarding the formal procedure. The Staffing Committee will nominate an Investigating Officer and Disciplinary Panel to hear the case.

The Investigating Officer who carries out an investigation should not have been involved in the matter to be investigated or shall not participate in any subsequent decision to take action under the procedure. Likewise, the Disciplinary Panel members hearing the case should not be involved in the investigation beforehand. It is important that respective roles are identified at an early stage so that those roles are not compromised.

Only the Staffing Committee has the right to suspend an employee and issue written warnings for minor misconduct, and in the case of the Clerk, issue a Record of Improvement.

5.. Informal Procedure & Performance Improvement Procedure

Where a case of minor misconduct or unsatisfactory performance occurs, which does not justify formal disciplinary action, the Clerk or in the case of the Clerk, the Chairman of the Staffing Committee, will arrange to meet with the employee concerned with the emphasis being on finding ways for the employee to improve and for the improvement to be sustained. The employee will be offered guidance, support, and additional training – where appropriate – to achieve the necessary standards. Representation will not normally be appropriate. The Clerk/Chairman of the Staffing Committee should make a note of such informal advice and guidance and should set out in writing, by completing a Record of Improvement form, detailing the required improvements and standards of conduct / performance that are expected in the future. This should be signed by both the Clerk/Chairman of Staffing Committee and Employee. The Record of Improvement should be placed on the employee's file with a copy given to the employee. The record of improvement will remain in force for 12 months.

If the employee's performance fails to improve, the Clerk may decide to follow the Performance Improvement Procedure, or for more serious matters or if further matters of misconduct become apparent, following consultation with the Chairman of the Staffing Committee, call an extraordinary meeting for the Staffing Committee to consider appropriate actions.

(Full details of the Performance Improvement Procedure can be found in the Employee Handbook.)

If during the discussion or following a Performance Improvement Plan it is considered that the matter may be more serious, the meeting should be adjourned. The employee will be informed that the matter will be continued under the formal disciplinary procedure.

The **Formal Procedure** will apply when:

- Previous informal advice, a record of improvement, a Performance Improvement Plan or other formal sanctions have proved ineffective;
- The allegation is of a serious nature.

6. The Formal Procedure

6.1 Suspension

In cases of alleged gross misconduct, the Clerk in liaising with the Chairman of the Staffing Committee or in their absence the Vice Chairman of the Staffing Committee may consider an immediate suspension, with pay, in order to convene an emergency meeting of the Staffing Committee, who will consider appropriate actions in line with formal procedures. (In the case of the Clerk, the Chairman of the Staffing Committee or in their absence the Vice Chairman of the Staffing Committee following the Clerks suspension shall convene an extraordinary meeting of the Staffing Committee to discuss the reasons for the suspension and formally approve appropriate actions). In some circumstances the Staffing Committee may consider suspension with pay while investigations are carried out for example, where relationships have broken down.

Suspension with pay will only be imposed after careful consideration by the Staffing Committee and will be reviewed to ensure it is not unnecessarily protracted. It will be made clear to the employee that suspension is not an assumption of guilt, and it is not considered a disciplinary sanction.

A letter will be supplied to the employee advising the reason for suspension, the period of suspension and that suspension does not constitute disciplinary action. This should be sent recorded delivery or be signed for if given in person.

The period of suspension should not normally last for more than 20 working days. However, this period can be extended where necessary.

The decision regarding whether or not suspension is necessary can be reviewed at any time during the disciplinary process.

6.2 Investigation

Before any decision can be made about whether or not a disciplinary hearing is necessary, an investigation must take place.

The Staffing Committee will appoint an appropriate Investigating Officer who will be confined to establishing the facts of the case. If the Staffing Committee considers that there are no Councillors who are independent (for example, because they have direct involvement in the allegations about the employee), it will appoint an Investigating Officer from outside the Council.

The responsibility of the Investigating Officer is to collect evidence by interviewing any relevant witnesses and gathering all documentation. An Investigatory Interview will normally be held with the employee concerned. The purpose of the interview is a fact-finding meeting, and it is important to keep an open mind and to gather the employee's initial response to the allegations along with evidence which supports the employee's case as well as evidence against and to identify whether any further investigation is needed.

The Staffing Committee will set out the terms of reference of the investigation. The terms of reference should deal with the following: -

- What the investigating office 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 a form of a 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 a report within 20 working days of appointment. The investigator's report will contain their recommendations and the findings on which they were based. They will recommend either:

- The employee has no case to answer and there should be 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.
- That arrangements of counselling, training, extra supervision, or written advice be provided.
- The employee has a case to answer and there should be action to arrange a disciplinary hearing.

For the benefit of the employee and the Council, any investigation must be concluded within a reasonable timescale. If there is a delay in completing the investigation, it is the responsibility of the Investigating Officer to regularly update the employee or their representatives on the progress of the investigation.

The Chairman of the Staffing Committee will first notify the employee in writing of the alleged misconduct and ask them to attend a meeting with the investigator. The employee will be given at least 5 working days' notice of the meeting with the investigator so that they have reasonable time to prepare for it. The letter will explain the investigatory process and that the meeting is part of that process. The employee should 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 and they have the right to be represented.

After the investigation the Clerk, in consultation with the Chairman of the Staffing Committee will call an extraordinary meeting of the Staffing Committee in order that they can consider the report from the investigating officer and make appropriate resolutions including if a disciplinary hearing should be convened.

6.3 Arranging a Disciplinary Hearing

Following receipt of the investigating officers report, if the Staffing Committee decides that there is a disciplinary case to answer, it will appoint a disciplinary hearing panel of three councillors. If the Staffing Committee considers that there are no Councillors who are independent (for example, because they have direct involvement in the allegations about the employee), it will appoint independent members from outside the Council.

The hearing panel will appoint a Chairman from one of its members. The Investigator shall not sit on the disciplinary hearing panel. No Councillor with direct involvement in the matter shall be appointed to the disciplinary hearing panel. A note taker will be appointed (someone who is not involved in the case).

The Investigating Officer is responsible for presenting the case and making arrangements for any witnesses that he or she relies upon to attend the meeting.

The employee is responsible for arranging any representation they choose to have and any witnesses that they may wish to call. Details of any witnesses the employee intends to call and a copy of all documents that the employee may wish to refer to at the hearing must be submitted to the Chairman of the Hearing Panel and the Investigating Officer at least 5 working days prior to the hearing.

The employee will be invited, in writing to attend the disciplinary hearing. The disciplinary hearing panels letter will confirm the following:

- The names of its Chairman and other two members.
- Details of the alleged misconduct or poor performance, its possible consequences and the employee's right to be represented at the meeting.
- A copy of the investigation report, all supporting evidence and a copy of the Council's disciplinary policy and procedure.
- The time and place of the meeting. The employee will be given reasonable notice of the hearing (at least 10 working days) so that they have 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 five working days before the meeting.
- That the employee and the Council will provide each other with all supporting evidence at least five working days before the meeting. If witnesses are not attending the meeting, witness statement will be submitted to the other side at least five working days before the hearing.
- That the employee may be accompanied by a companion – a workplace colleague, a trade union representative or a trade union official.

6.4 Conducting a hearing

The objective is:

- To establish the facts.
- To hear the evidence in respect of the allegation, the employee's response, and to decide whether or not the allegation is substantiated; and
- If the allegation is substantiated, to determine the disciplinary sanction to be applied in light of the seriousness of the offence and having regard to previous relevant disciplinary history.
- The standard of proof is 'on the balance of probabilities'.

The procedure to be followed is:

1. The Chairman of the hearing introduces those present and explains why they are there;
2. The Chairman to explain the purpose of the meeting is to consider whether disciplinary action should be taken and the allegations;
3. The Chairman to explain how the hearing will be conducted;
4. Presentation of the case by the Investigating Officer with witnesses called as necessary;
5. Questions by employee or their representative;
6. Questions by the Panel;
7. Presentation of the case by the employee or their representative with witnesses called as necessary;
8. Questions from Investigating Officer;
9. Questions from Panel;
10. Concluding statement by Investigation Officer;
11. Concluding statement by employee or their representative;
12. The Chairman to sum up and inform the employee of process following the meeting;
13. The disciplinary hearing considers their recommendations and completes a report for the Staffing Committee.

Requests for an adjournment can be made at any stage and it is up to the Chair to decide whether or not a request should be granted.

If new facts emerge, it may be necessary to adjourn the meeting to investigate them and reconvene the meeting when this has been done.

Where an employee raises a grievance during a disciplinary process, it may sometimes be appropriate to consider temporarily suspending the process in order to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently. It may be appropriate to consider stopping the process and suspending the disciplinary procedure – for example when:

- The grievance related to a conflict of interest that the parties holding the hearing are alleged to have.
- Bias is alleged in the conduct of the disciplinary hearing.
- Information and evidence provided to the panel holding the hearing may have been selective.
- There is possible unlawful discrimination.

It would not be appropriate to suspend the hearing where the employee makes an invalid point.

The Clerk, in consultation with the Chairman of the Staffing Committee will call a meeting of the Staffing Committee the same day as the disciplinary hearing in order to consider the findings of the hearing and make appropriate resolutions.

The decision of the Council will be confirmed to the employee in writing within 5 working days. The letter should clearly set out:

- The Panel's decision including the reasons and sanctions.
- The length of time that any warning will be active for.
- The expected improvement in conduct.
- Any assistance that will be provided to achieve this and
- The employee's right to appeal.

7. Levels of Disciplinary Action

In determining the appropriate disciplinary action, regard should be given to the employee's previous record, the gravity of the offence, and any explanation given.

Although the procedure implies a sequential approach, there may be certain circumstances where the matter needs to be considered immediately under Stages 2, 3, or 4.

Stage 1 – Record of Improvement/Informal

As part of the Informal Procedure. Where minor concerns about conduct or unsatisfactory performance become apparent it is the Clerk's responsibility to raise this with the employee and clarify the improvements required. A Record of Improvement will be completed and kept by the Clerk and signed by both the Clerk and employee. The informal discussions and record of improvement does not form part of the formal disciplinary procedure, however if the conduct or performance fails to improve or if further matters of mis-conduct become apparent, the Clerk may decide to call an extraordinary meeting of the Staffing Committee for them to consider appropriate actions (in the case of the Clerk, the Chairman of the Staffing Committee or in their absence the Vice Chairman of the Staffing Committee should complete the record of improvement). The Record of Improvement will remain in force for 12 months.

Stage 2 – First Written Warning

This is the first stage of the formal disciplinary process. A written warning may be issued if there is a repetition of earlier misconduct which resulted in a Record of Improvement being issued, or for different and more serious misconduct.

If a first written warning is issued employees will be given a letter setting out the following:

- 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 to 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 12 months.

Stage 3 – Final Written Warning

If the employee has a current warning about conduct or performance, then further misconduct or unsatisfactory performance may warrant a final written warning. This may also be the case where 'first office' misconduct is sufficiently serious but would not justify dismissal. 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.
- The employee's right to 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 24 months.

Stage 4 – Dismissal with notice

If the employee has received a final written warning, further misconduct or unsatisfactory performance may warrant dismissal. Employees should only be dismissed if, despite warnings, conduct or performance does not improve to the required level within the specified time period. Dismissal must be reasonable in all the circumstances of the case.

Unless the employee is being dismissed for reasons of gross misconduct, he or she should receive the appropriate period of notice or payment in lieu of notice.

Stage 5 – Dismissal without notice

In the case where gross misconduct is established, the employee will be liable to summary dismissal, i.e. without notice or pay in lieu of notice.

8. Length of Warnings

A Record of Improvement will remain in force for 12 months, a First Written Warning will remain in force for 12 months and a Final Written Warning will remain in force for 24 months from the date of the disciplinary hearing.

9. The Right of Appeal

An employee has the right to appeal against disciplinary action resulting in a warning or their dismissal.

An employee who wishes to appeal must do so in writing to the Clerk (or Chair of the Staffing Committee, in relation to matters concerning the Clerk). This must be done within **10 working days** of the disciplinary hearing informing them of the disciplinary action taken. The appeal letter must set out the grounds for the appeal, normally under one of the following headings:

- The severity of the disciplinary action.
- The findings of the Panel on a point of fact which is pertinent to the decision of the hearing; and
- A failure to adhere to the disciplinary procedure.

9.1 Arranging an Appeal

Following receipt of an appeal, the Clerk, in consultation with the Chairman of the Staffing Committee will call an extraordinary meeting of the Staffing Committee. The committee will arrange an Appeal Committee consisting of 3 members to hear the appeal, providing that they have had no previous involvement in the matter. An independent adviser may be arranged if appropriate along with a note taker. The date and time of the appeal will be organised by the Clerk (or Chair of the Staffing Committee, in relation to matters concerning the Clerk). It is the responsibility of each side to prepare themselves for the appeal, including arranging for any witnesses to attend.

The Chair of the original Panel and the employee or their representative will, where possible, agree papers for submission to the appeal 5 days prior to the hearing.

9.2 Conducting an Appeal Hearing

The objective is:

- To review the decision of the disciplinary hearing and decide whether that action is warranted or not;
- If the action is not warranted, to determine what action if any is appropriate; and
- The standard of proof is 'on the balance of probabilities'.

In doing so, the Appeal Panel will have regard to seriousness of the offence and any previous relevant disciplinary history.

The procedure to be followed is:

1. Presentation of the case by the Manager (the Chair of the previous hearing) who took the disciplinary action;
2. Questions by the appellant to the Manager;
3. Presentation of the appellant's case, including calling any witnesses;
4. Questions by the Manager to the appellant and their witnesses;
5. Questions by the Appeals Panel to both parties and their witnesses;
6. Concluding statements by the parties. No new information should be introduced at this stage and the appellant should have the opportunity to sum up last;
7. Adjournment of the Panel to make their decision;
8. The appeal is reconvened if possible and both parties are informed of the decision;
9. Written confirmation of the Appeals Panel's decision within 5 working days of the hearing.

The Appeals Panel has the right to call its own witnesses should it consider this to be of assistance in making its decision.

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.

10. Trade Union Officials

In normal circumstances, no action will be taken against an officer of a recognised trade union until the matter has been discussed with a full-time officer of that union.

11. Disciplinary Rules

It is difficult to define all the acts of misconduct that might lead to disciplinary action. As a general principle, a test of reasonableness would be applied, i.e. would a reasonable person be aware that disciplinary action would result from a certain act or omission.?

11.1 Misconduct

Misconduct is employee behaviour than can lead to the employer taking disciplinary action. This list contains some examples of misconduct, the list is not exhaustive and other behaviour not listed may lead to disciplinary action.

- Breach of health and safety policies and procedures;
- Poor time-keeping/ attendance;
- Unauthorised absence from work;
- Inappropriate or unauthorised use of Council's resources and facilities including telephone, email, IT, internet, equipment and transport;
- Waste, loss or damage of Council property through failure to take due care or diligence;
- Negligence or failure in performance of duty; ~~and~~
- Inappropriate behaviour;
- Bribery offences under the Bribery Act 2010.

11.2 Types of Gross Misconduct

Unacceptable conduct, which may be regarded as gross misconduct, is likely to lead to an employee's summary dismissal. This means dismissal without notice and occurs when the employment relationship between the Council and employee, and the trust which is inherent in that, is irrevocably broken.

The list below gives examples of matters likely to be regarded as gross misconduct and is not exhaustive.

- Refusing to follow reasonable management instructions;
- Theft from the Council, its Members, employees, or the public;
- Physical assault or verbal abuse;
- Fraud or deliberate falsification of records;
- Falsification of qualifications;
- Serious negligence which causes unacceptable loss, injury, or damage;
- Serious acts of insubordination;
- Serious breach of confidence;
- Use of privileged information for personal gain;
- Malicious damage to the Council's property;
- Sexual misconduct;
- Unlawful discrimination, victimisation, bullying or harassment;
- Serious breaches of health & safety; policies & procedures;
- Incapability through alcohol or drugs;
- Accessing or distributing pornography on the Council's IT facilities.

11.3 Examples of unsatisfactory work performance

The following list contains some examples of unsatisfactory work performance:

- Inadequate application of office procedures.
- Inadequate IT skills.
- Unsatisfactory management of employees.
- Unsatisfactory communication skills.

12. Training

Appropriate training will be given to the Clerk or any Members who might be involved in disciplinary or appeals meetings to ensure that they fulfil their responsibilities under this procedure.

13. Keeping Written Records

Records kept will include:

- The complaint against the employee
- The employee's defence
- Findings made and actions taken
- Whether an appeal was lodged
- The outcome of the appeal
- Any Grievances raised during the disciplinary procedure
- Subsequent developments
- Notes of any formal meetings.

Records will be treated as confidential and be kept no longer than necessary in accordance with the General Data Protection Regulation.

Copies of meeting records will be given to employee including copies of any formal minutes that may have been taken. In certain circumstances (for example to protect a witness) the employer might withhold some information.