



## WEST MONKTON PARISH COUNCIL COMPLAINTS/GRIEVANCE/DISCIPLINARY POLICY

### **PROCEDURE FOR USE IN COMPLAINTS OR GRIEVANCE<sup>1</sup> AGAINST THE COUNCIL AND/OR ITS EMPLOYEES**

The following procedure has been adopted for dealing with complaints about the Council's administration or its procedures. Complaints about a policy decision made by the Council will be referred back to the Council, or relevant Committee, as appropriate, for consideration.

This procedure does not cover complaints about the conduct of a Member of the Parish Council. Such complaints should be dealt with according to the Code of Conduct, or if that fails to resolve the complaint, referred to Somerset West and Taunton Council and if needs be to the Standards Board. Complaints about a member of the Parish Council by an employee are affected by the Ledbury case.<sup>2</sup>

#### **Before the Meeting**

1. The complainant should be asked to put the complaint about the council's procedures or administration in writing to the clerk or other nominated officer. If the complaint is only notified orally to a councillor, or to the clerk to the council, a written record of the complaint will be made, noting the name and contact details of the complainant and the nature of the complaint.

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<sup>1</sup> Grievance: In Law, this is a complaint due to injury, injustice, or wrong. It can be a specific complaint or notification of employee dissatisfaction about pay, expectations, work conditions or other employment aspects.

<sup>2</sup> 22 JUNE 2018

#### **NALC AND SLCC JOINT STATEMENT ON THE LEDBURY CASE**

NALC and SLCC have today written to the Ministry of Housing, Communities and Local Government, the Committee on Standards in Public Life and Local Government Association to highlight their concerns about a recent legal judgement which will make it more difficult for local (parish and town) councils to resolve disputes between councillors and their employees.

This decision confines most complaints about councillors to the code of conduct process. Employees will now not generally be able to use their councils' grievance procedures if the subject of their grievance is a complaint about a councillor. Inevitably, this will lead to more principal authority involvement in local council matters and place additional burdens on already hard-pressed Monitoring Officers. It is also likely that matters which previously would have been dealt with fairly quickly within a council will take substantively longer when dealt with by the principal authority.

This decision will impact on the corporate wellbeing of councils and NALC and SLCC have therefore called for urgent discussions to try and find a sensible way forward to streamline processes and ensure quick and fair resolution of disputes.

The full High Court judgment in the case of R (Harvey) v Ledbury Town Council [2018] EWHC 1151 (Admin) on 15 May 2018 can be found at: <http://www.bailii.org/ew/cases/EWHC/Admin/2018/1151.html>

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2. If the complainant does not wish to put the complaint to the clerk or other nominated officer, he or she should be advised to address it to the chairman of the council.
3. The clerk or other nominated officer shall acknowledge receipt of the complaint and advise the complainant when the matter will be considered by the council or by the committee established for the purposes of hearing complaints. The complainant should also be advised whether the complaint will be treated as confidential or whether, for example, notice of it will be given in the usual way (if, for example, the complaint is to be heard by a committee).
4. The complainant shall be invited to attend a meeting and to bring with them a representative if they wish.
5. Seven clear working days prior to the meeting, the complainant shall provide the council with copies of any documentation or other evidence relied on. The council shall provide the complainant with copies of any documentation upon which they wish to rely at the meeting and shall do so promptly, allowing the claimant the opportunity to read the material in good time for the meeting.

#### **At the Meeting**

6. The council shall consider whether the circumstances of the meeting warrant the exclusion of the public and the press. Any decision on a complaint shall be announced at the council meeting in public.
7. The chairman should introduce everyone and explain the procedure.
8. The complainant (or representative) should outline the grounds for complaint and, thereafter, questions may be asked by (i) the clerk or other nominated officer and then (ii) members.
9. The clerk or other nominated officer will have an opportunity to explain the council's position and questions may be asked by (i) the complainant and (ii) members.
10. The clerk or other nominated officer and then the complainant should be offered the opportunity to summarise their position.
11. The clerk or other nominated officer and the complainant should be asked to leave the room while members decide whether or not the grounds for the complaint have been made. If a point of clarification is necessary, *both* parties shall be invited back.
12. The clerk or other nominated officer and the complainant should be given the opportunity to wait for the decision, but if the decision is unlikely to be finalised on that day they should be advised when the decision is likely to be made and when it is likely to be communicated to them.

#### **After the Meeting**

13. The decision should be confirmed in writing within seven working days together with details of any action to be taken.

*The procedures described above should be used in conjunction with NALC Legal Topic 9E.*

In the event of complaint/grievance or disciplinary matter by a Councillor or an employee of the Council, the matter will be heard by one of the following panels as appropriate.

#### WEST MONKTON PARISH COUNCIL GRIEVANCE AND DISCIPLINARY PANELS

It is a statutory requirement of the employment contract to have these panels.

This document should be kept on file and regularly updated whenever there is a change within the Parish Council.

The purposes of these panels are to listen to all sides of the arguments or statements in the event of a complaint against anyone involved within the Parish Council and the Employees.

#### Grievance Panel

Stuart Haskins (Chair) 412636  
Alan Hall  
Hazel Ellis 412485  
Norman Cavill 413524  
(Will float between both)

#### Disciplinary Panel

Chairman of this Panel would usually be the Parish Council Chairman

Mark Besley 412269  
Barry Gage 413433  
Ray Tully 01823 252368  
Norman Cavill 413524  
(Will float between both)

### **DISCIPLINARY PROCEDURE FOR COUNCIL EMPLOYEES**

#### **Introduction**

This procedure 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. In accordance with the Employment Rights Act 1996, Human Rights Act 1998, and the ACAS Code of Practice on Disciplinary Procedures, this procedure sets out the framework for resolving issues relating to misconduct and unsatisfactory performance.

This procedure will apply to all employees unless it conflicts with contractual or statutory requirement, which will take precedence.

#### **General Principles**

The procedure 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 the manager<sup>3</sup>. However, where there has been a serious first time breach of disciplinary rules or gross misconduct the formal procedure should be actioned immediately.

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

At every stage in the procedure the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made.

The employee has the right to be represented at disciplinary hearings and appeals.

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<sup>3</sup> The Line Manager would usually be the Parish Clerk

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. Should the employee fail to attend without an acceptable reason, then the Chair of the hearing or appeal may proceed in the employee's absence.

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.

### **Roles and Responsibilities**

Where a minor disciplinary issue arises the line manager<sup>4</sup> will normally consider the matter and will resolve it if they can without recourse to the formal procedure.

Allegations of more serious misconduct or where a previous warning has been given but the required improvement has not been made, should immediately be referred to the Parish Clerk who will then be responsible for nominating an Investigating Officer. If the misconduct relates to the Parish Clerk this should be referred to the Chairman of the Disciplinary panel.

The Officer who carries out an investigation should not participate in any subsequent decision to take action under the procedure. Likewise, the Officer 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. The Investigating Officer need not be the employee's supervisor or line manager although this would normally be the case.

Only the Parish Clerk has the right to suspend an employee and provide verbal or written warnings for minor misconduct.

### **Representation**

Employees have the right to representation at hearings and appeals relating to any stage of the formal procedure. This can be a trade union representative, non-union employee representative or a work colleague.

Representatives have the right to address the hearing or appeal. They may also ask questions and present the employee's case. However they have no right to answer questions on the employee's behalf.

### **Informal Procedure, Advice & Guidance**

Where a minor breach of acceptable/ established standards of conduct occurs which does not justify formal disciplinary action, the Line Manager<sup>3</sup> will advise the employee concerned of the conduct or standard expected in the future. In many cases this will provide sufficient encouragement for the employee not to commit further acts of misconduct.

The employee will be offered guidance, support and where appropriate additional training to achieve the necessary standards. Representation will not normally be appropriate. Managers should make a note of such informal advice and guidance and should set out in writing the required improvements and standards of conduct that are expected in the future. Records of informal advice/counselling should be kept on employee's personal files.

However, the formal procedure will apply when: -

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<sup>4</sup> The Line manager would usually be the Parish Clerk

- previous informal advice or warnings have proved ineffective;
- the allegation is of a serious nature;
- a number of minor allegations are made which taken together constitute a serious breach of discipline.

## **The Formal Procedure**

### **Suspension**

In some circumstances the Parish Clerk may consider suspension, with pay, pending further investigation or until the disciplinary hearing takes place. Suspension may be appropriate where: cases potentially involve gross misconduct; relationships have broken down; there is a risk to the employer's property or to other people. An employee should be advised that suspension in itself does not constitute disciplinary action.

An employee should be advised of the reasons for suspension. The period of suspension should not normally last for more than 20 working days, however where necessary this period can be extended.

The decision whether suspension is necessary can be reviewed at anytime in the disciplinary process.

### **Investigation**

Before any decision can be made about whether or not a disciplinary hearing is necessary, an investigation must take place. The Parish Clerk (or the Disciplinary Panel in relation to matters concerning the Parish Clerk) should appoint an appropriate investigating officer, who could be an external adviser, who will report back with their findings and make recommendations as to whether a disciplinary hearing should be convened.

The responsibilities of the Investigating Officer are to collect evidence by interviewing any relevant witnesses and gathering all documentation. An Investigatory Interview should be held with the employee concerned whereby the employee is given 5 working days notice, in writing, outlining the general nature of the allegation. The purpose of the interview is to present the findings of the investigation to the employee and allow them to answer or shed light on the potential allegations to assist the investigating officer to decide if he or she should recommend a disciplinary hearing and/or whether any further investigation is needed.

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.

Once the Investigating Officer has gathered all the relevant facts and reviewed the evidence, a report should be drafted to the Parish Clerk (or Disciplinary Panel) recommending one of the following:

- take no further action and inform the employee accordingly;
- advise the arrangement of counselling, training, extra supervision or written advice as appropriate;
- arrange a disciplinary hearing.

### **Arranging a Hearing**

If, following the recommendations of the Investigating Officer, the Parish Clerk concludes that a hearing is required then the necessary arrangements should be made by the Parish Clerk. The employee should be given at least 5 working days notice in writing. The letter should include a clear written statement of the allegation and should enclose any documentary evidence being relied upon and a reminder of the employee's right to be represented.

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 Investigating Officer at least 3 working days prior to the hearing.

### **Conducting a hearing**

The Panel for a hearing would normally comprise of the Parish Clerk (or three members of the Disciplinary Panel), in relation to matters concerning the Parish Clerk) and an independent HR representative to advise, as appropriate.

The objective is: -

- to hear the evidence in respect of the allegation, the employee's response and to decide whether the allegation is substantiated or not;
- if the allegation is substantiated, determine the disciplinary sanction to be applied in light of the seriousness of the offence and having regard to previous relevant disciplinary history.

The procedure to be followed is: -

- introduce Panel members and specify their roles;
- clarify the purpose of the hearing and state the allegation;
- presentation of the case by the investigating officer with witnesses called as necessary;
- questions by employee and/or their representative;
- questions by the Panel;
- employee and/or their representative to state their case with witnesses called as necessary;
- questions from investigating officer;
- questions from Panel;
- investigating officer to sum up;
- employee/representative to sum up;
- panel adjourn to make their decision;
- hearing reconvened and the employee/representative informed of the decision and, if necessary, their rights of appeal.

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.

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

- the Panel's decision;
- 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;
- the employee's right to appeal.

## **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 Steps 2, 3 or 4.

- Step 1 Oral warning: For a minor offence, a formal verbal warning (confirmed in writing) making it clear that further misconduct will render the employee liable to further disciplinary action including more severe consequences.
- Step 2 First written warning: For a more serious offence or where a previous warning to the employee has not resulted in the required improvement to their conduct.
- Stage 3 Final Written warning: For a sufficiently serious offence which might warrant only one written warning but is insufficiently serious to justify dismissal, or where previous warnings have been ineffective.
- Stage 4 Dismissal with notice: For an act or acts of misconduct, other than gross misconduct, by an employee who is under a final written warning. The employee will be liable to dismissal without pay or in lieu of notice  
Dismissal without notice: In cases where gross misconduct is established the employee will be liable to summary dismissal, that is without notice or pay in lieu of notice.

## **Length of Warnings**

Records of informal meetings and formal warnings will be kept on employee's personal files. An oral warning will be live for 6 months and written warnings live for 12 months from the date of the disciplinary hearing. Final written warnings will be live for 2 years.

## **The Right of Appeal**

An employee has the right to appeal against disciplinary action resulting in a warning or their dismissal. Three members of the Appeal Committee will hear the appeal, providing that they have had no previous involvement in the matter, assisted by an independent adviser.

An employee who wishes to appeal must do so in writing to the Parish Clerk (or Chair of the Disciplinary Panel in relation to matters concerning the Parish 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;
- a failure to adhere to the disciplinary procedure.

## **Arranging an Appeal**

The date and time of the appeal will be organised by the Parish Clerk (or Chair of the Personnel Committee, in relation to matters concerning the Parish 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 five days prior to the hearing.

## **Conducting an Appeal Hearing**

The objective is:-

- to review the decision of the disciplinary hearing and decide whether that action is warranted or not;
- and, if the action is not warranted, to determine what action if any is appropriate;
- 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:-

- the appellant puts their case including calling any witnesses;
- the Manager<sup>5</sup> has the opportunity to ask questions of the appellant and witnesses;
- the Manager<sup>4</sup> (Chair of the previous hearing) who took the disciplinary action puts their case for having done so, which may include calling any witnesses;
- the appellant has the opportunity to ask questions of the Manager<sup>4</sup> and witnesses;
- the Appeals Panel has the opportunity to ask questions of both parties and witnesses;
- both parties have the opportunity to sum up should they wish to do so. No new information should be introduced at this stage and the appellant should have the opportunity to sum up last;
- the appeal is adjourned to allow the Panel to reach a decision;
- the appeal is reconvened and both parties are informed of the decision;
- the Appeals Panel write to both parties informing them of their decision within 5 working days.

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

### **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.

### **Disciplinary Rules**

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

The following are examples of the types of conduct which are unacceptable and which may lead to disciplinary action. The list is not exhaustive and other behaviour not listed may lead to disciplinary action when necessary.

- Poor time-keeping/ attendance
- Unjustifiable absence from work
- Waste, loss or damage of Council property through failure to take due care
- Negligence or failure in performance of duty
- Inappropriate use or unauthorised use of e-mail, IT or telephone facilities
- Being under the influence of alcohol or drugs

### **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.

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<sup>5</sup> Line Manager would usually be the Parish Clerk

The list 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 at work
- Discrimination, victimisation or harassment
- Serious breaches of safety rules
- Serious incapability through alcohol or drugs
- Accessing or distributing pornography on the Council's IT facilities

### **Training**

Appropriate training can be requested by the Parish Clerk or any Members who might be involved in disciplinary or appeals meetings to ensure they fulfil their responsibilities under this procedure.

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