

# **SOUTH HEIGHTON PARISH COUNCIL**

## **Disciplinary Policy/Procedure**

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## Notes and Background

The Parish Council is committed to achieving good local governance. This means that the Parish Council wants to ensure that they are doing the right things, in the right way, for the right people, in a timely, inclusive, open, honest and accountable manner.

To help the Parish Council achieve this we aim to follow the six principles of good local governance:

- 1 Focusing on the purpose of the Council and on outcomes for the community and creating and implementing a vision for the local area;
- 2 Members and officers working together to achieve a common purpose with clearly defined functions and roles;
- 3 Promoting values for the Council and demonstrating the values of good governance through upholding high standards of conduct and behaviour;
- 4 Taking informed and transparent decisions which are subject to effective scrutiny and managing risk;
- 5 Developing the capacity and capability of members and officers to be effective;
- 6 Engaging with local people and other interested persons to ensure robust public accountability.

As a first tier of local government the Parish Council is directed and controlled by central government legislation. This document is one of a number, which together, sets out the systems and processes of how the Parish Council works within this framework and, as importantly, our culture and values on the way we work, so that we may fulfil these six principles.

This Disciplinary Procedure is based on the National Association of Local Council's (NALC) Legal Topic Note 22 and the appended model disciplinary procedures issued in January 2013.

It has been prepared in the light of advice and guidance given in "Being a Good Employer – A Guide for Parish and Town Councillors" published by the National Training Strategy for Town & Parish Councils.

It should be read in conjunction with the other adopted policies, procedures and protocols of the Parish Council such as the Council's Standing Orders and the "Roles and Responsibilities of Councillors and Officers Protocol", which deals in more detail with what is expected of Councillors, the Clerk and any appointed Officer of the Parish Council in respect of their roles, responsibilities and working relationships. In particular it should be read in association with the Council's complementary Grievance Procedure through which employees can raise work-related concerns.

The Council is committed to being a responsible employer and the adoption and application of this Policy/Procedure is part of this commitment.

For their part the Parish Clerk and any other Officer appointed by the Parish Council is also expected to comply with the principles of this Policy/Procedure and abide by its outcomes.

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## 1.0 Structuring of Committees/Panels and Procedures

### Establishing Committees and Panels

- 1.1 The Parish Council has a limited number of Councillors to fulfil the various roles set down in the NALC model to avoid Members being involved in more than one aspect of the procedure. Consequently minor amendments have had to be made to facilitate a practical and manageable procedure to meet the circumstances of the Council. In normal circumstances the Committees and Panel relevant to this Disciplinary Procedure will be established in the following way:
- a) The Council will appoint at its Annual Meeting a Staffing Committee consisting of the Chairman of the Council and two other Members, but excluding the Vice Chairman of the Council. In respect of this Disciplinary Procedure this Committee will have delegated authority to appoint an Inspector on behalf of the Council, consider their report and decide whether further action will be taken i.e. whether or not disciplinary action should be taken.
  - b) The Council will also appoint at its Annual Meeting a Disciplinary Committee consisting of the Vice Chairman of the Council and two other Members, but excluding the Chairman of the Council and where possible the other two Members of the Staffing Committee. In respect of this Disciplinary Procedure this Committee will have delegated authority to hold a disciplinary meeting and subsequently determine if disciplinary action should be taken and if so the nature and extent of the disciplinary action, up to and including dismissal.
  - c) Should an appeal under the terms of this Disciplinary Procedure be received by the Council, then the Council will appoint an Appeals Panel. This Panel/Committee will be made up of the Chairman of the Council and two other Members who are not members of the Disciplinary Committee. This Panel/Committee will have delegated authority to decide to uphold the decision of the Disciplinary Committee, substitute a less serious sanction or decide that no disciplinary action is necessary. The decision of this Appeals Panel will be final.

### Alternative Procedural Arrangements

- 1.2 If, at the time of any allegation(s), there are insufficient Members serving on the Council to appoint the Committees and Panels referred to above to fulfil this adopted Disciplinary Procedure, the Council will, in consultation with the Sussex Association of Local Council's (SALC) establish the following arrangements which incorporate the key elements of the disciplinary procedure, namely:

Disciplinary Investigation (paragraphs 9-16)

- 1.3 The initial consideration of a case and the appointment of an independent Inspector, normally considered by the Staffing Committee a) above. This role will be performed by the Council, who will consider if they believe there is a case to answer following any allegations. There will still be an independent investigation of the facts. Should the Council consider there is a case to answer they will, through the Chairman and in consultation with SALC, appoint an independent Investigator who will be responsible for undertaking the disciplinary investigation and reporting back to the Council. In the light of this report the Council will consider whether further action will be taken, or if not they may consider whether mediation would be appropriate in the circumstances.

#### Disciplinary Meeting and Action (paragraphs 17-19)

- 1.4 Undertaking the disciplinary meeting and deciding on the disciplinary action, normally undertaken by the Disciplinary Committee b) above. Should the Council resolve to pursue disciplinary action, this role will be undertaken by a Disciplinary Panel made up of the Vice Chairman and two other Members from the Council, excluding the Chairman. If there are insufficient Members of the Council to achieve this (i.e. there are only three Members serving on the Council, its minimum number to be quorate), in consultation with SALC, consideration will be given by the Council to appointing third party member(s) to complete the Panel. The final established Panel will then hold the disciplinary meeting, decide if there should be disciplinary action and at what level, oral, written or dismissal.

#### Appeal (paragraphs 27-36)

- 1.5 The opportunity for, and consideration of, an appeal against the disciplinary decision, normally undertaken by an Appeals Panel c) above. Should an appeal be received by the Council to the disciplinary decision, then the Council in consultation with SALC, will establish an independent Appeals Panel lead by the Chairman of the Council with two other third party members. This Appeals Panel will then consider the appeal and decide whether to uphold the decision of the Disciplinary Committee, substitute a less serious sanction or decide that no disciplinary action is necessary. The decision of this Appeals Panel will be final.

### **Establishing and Notification of Alternative Procedural Arrangements**

- 1.6 Should there be a need to use these alternative arrangements the Chairman of the Council will consult with SALC to confirm their structure and details and will then notify the employee at the beginning of the process prior to the Council considering any allegation(s) at the initial stage.

## **2.0 Supplementary Procedures**

### **Recording of Meetings**

- 2.1 Proceedings will normally be minuted by someone appointed by the Council in consultation with SALC.

### **Attendance with Employees**

- 2.2 An employee does not have a statutory right to be accompanied to an investigatory meeting. However, this disciplinary procedure permits employees to be accompanied to an investigatory meeting.

### **Mediation**

- 2.3 Mediation may be appropriate at any stage of the disciplinary or grievance procedure (for example where there have been communication breakdowns or allegations of bullying and harassment). Mediation is a confidential dispute resolution process that requires the Council's and the employee's consent. The mediator is an independent person who helps individuals or groups try to find a solution. Mediators do not make judgments or determine outcomes - they ask questions that help to uncover underlying problems, assist the parties to understand the issues and clarify the options for resolving their difference or dispute.

## **Data protection**

- 2.4 Information about disciplinary or grievance matters should be restricted to those involved in the disciplinary process. Any disciplinary action or grievance outcome should remain confidential. The employee's disciplinary and grievance records should be held by the Council in accordance with the Data Protection Act 1998. The personnel files of the Parish Clerk are held by the Chairman of the Council, the personnel files in respect of other appointed Officers or employees of the Council are held by the Parish Clerk.

### 3.0 Introduction

- 3.1 This Disciplinary Procedure is part of the process by which the Council can deal with concerns about employee misconduct or poor performance. The Council also has a complementary Grievance Procedure through which employees can raise work-related concerns.
- 3.2 Many minor disciplinary and grievance matters can be resolved informally, through appropriate supervisory and management procedures. However, formal policies such as this can help Councils deal with employment disputes fairly, consistently and in accordance with equality legislation. Wherever possible, the Council will try to resolve its concerns about employees' behaviour informally, without starting the formal procedure set out below.
- 3.3 This policy/procedure is based on and complies with the 2009 ACAS Code of Practice. It is designed to help Council employees improve unsatisfactory conduct and performance in their job.
- 3.4 The policy will be applied fairly, consistently and in accordance with the Equality Act 2010.
- 3.5 This policy confirms:
- a) The Council will fully investigate the facts of each case.
  - b) The Council recognises that misconduct and unsatisfactory work performance are different issues. This disciplinary policy will also apply to work performance issues to ensure that all alleged instances of employees' underperformance are dealt with fairly and in a way that is consistent with required standards. However, this disciplinary policy will normally only be used when performance management proves ineffective.
  - c) Employees will be informed in writing about the nature of the complaint against them and given the opportunity to state their case.
  - d) Employees may be accompanied or represented by a trade union representative or a work colleague at any disciplinary or investigatory meeting. 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 his/her case.
  - e) The Council will give employees reasonable notice of any meetings in this procedure. 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. An employee who does not attend a meeting will be given the opportunity to be represented and to make written submissions.
  - f) 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.
  - g) Any changes to specified time limits in the Council's procedure must be agreed by the employee and the Council.

- h) Information about an employee's disciplinary matter will be restricted to those involved in the disciplinary process. A record of the reason for disciplinary action and the action taken by the Council is confidential to the employee. The employee's disciplinary records will be held by the Council in accordance with the Data Protection Act 1998.
- i) Recordings of the proceedings at any stage of the disciplinary procedure are prohibited, unless agreed as a reasonable adjustment that takes account of an employee's medical condition.
- j) Employees have the right to appeal against any disciplinary action. The appeal decision is final.
- k) If an employee who is already subject to the Council's disciplinary procedure, raises a grievance, the grievance will normally be heard after the completion of the disciplinary procedure.
- l) Disciplinary action taken by the Council can include an oral warning, written warning, final written warning or dismissal.
- l) Except for gross misconduct when an employee may be dismissed without notice, the Council will not normally dismiss an employee on the first occasion that it decides there has been misconduct.
- m) If an employee is suspended following allegations of misconduct, it will be on full pay and only for such time as is necessary. Suspension is not a disciplinary sanction. The Council will write to the employee to confirm any period of suspension and the reasons for it.
- n) The Council may consider mediation at any stage of the disciplinary procedure where appropriate (for example where there have been communication breakdowns or allegations of bullying or harassment). Mediation is a dispute resolution process that requires the Council's and the employee's consent.

## **4.0 Examples of Misconduct**

- 4.1 Misconduct is employee behaviour that can lead to the employer taking disciplinary action. The following list contains some examples of misconduct.
- a) unauthorised absence
  - b) poor timekeeping
  - c) misuse of the Council's resources and facilities including telephone, email and internet
  - d) inappropriate behaviour
  - e) refusal to follow reasonable instructions
  - f) breach of health and safety rules.

## **5.0 Examples of Gross Misconduct**

- 5.1 Gross misconduct is misconduct that is so serious that it is likely to lead to dismissal without notice. The following list contains some examples of gross misconduct.
- a) bullying, discrimination and harassment
  - b) incapacity at work because of alcohol or drugs
  - c) violent behaviour
  - d) fraud or theft
  - e) gross negligence
  - f) gross insubordination
  - g) serious breaches of health and safety rules
  - h) serious and deliberate damage to property
  - i) use of the internet or email to access pornographic, obscene or offensive material
  - j) disclosure of confidential information.

## **6.0 Examples of Unsatisfactory Work Performance**

- 6.1 The following list contains some examples of unsatisfactory work performance.
- a) inadequate application of office procedures
  - b) inadequate IT skills
  - c) unsatisfactory management of staff
  - d) unsatisfactory communication skills.

## **7.0 DISCIPLINARY INVESTIGATION**

- 7.1 There will be an investigation of the facts. The Council's Staffing Committee will, in consultation with the Sussex Association of Local Councils (SALC), appoint an Investigator who will be responsible for undertaking the disciplinary investigation. The Investigator will be independent and will normally be someone from outside the Council as the limited number of Council Members does not readily facilitate the Investigator being a Councillor from the authority. The Investigator will be appointed as soon as possible after the allegations have been made. The Investigator will be asked to submit a report within 20 working days of appointment. In cases of alleged unsatisfactory performance or of allegations of minor misconduct, the appointment of an Investigator may not be necessary and the Council may decide to commence disciplinary proceedings at the next stage (see paragraphs 14 -16).
- 7.2 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 five 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.

- 7.3 Employees may be accompanied or represented by a trade union representative or a work colleague at any investigatory meeting.
- 7.4 If there are other persons (e.g. employees, councillors, members of the public or the Council's contractors) who can provide relevant information, the Investigator should try to obtain it from them in advance of the meeting with the employee.
- 7.5 The Investigator has no authority to take disciplinary action. Their role is to establish the facts of the case as quickly as possible and prepare a report that recommends to the Staffing Committee whether or not disciplinary action should be taken.
- 7.6 The Investigator's report will contain their recommendations and the findings on which they were based. They will recommend either:
- a) the employee has no case to answer and there should be no further action under the Council's Disciplinary Procedure,
  - b) the matter is not serious enough to justify further use of the Disciplinary Procedure and can be dealt with informally, or
  - c) the employee has a case to answer and there should be action under the Council's Disciplinary Procedure.
- 7.7 The Investigator will submit the report to the Staffing Committee which will decide whether further action will be taken.
- 7.8 If the Council decides that it will not take disciplinary action, it may consider whether mediation would be appropriate in the circumstances.

## **8.0 THE DISCIPLINARY MEETING**

- 8.1 If the Staffing Committee decides that there is a case to answer, the Council's Disciplinary Committee will deal with the next steps in the process. The Disciplinary Committee will appoint a Chairman from one of its members and this will normally be the Vice Chairman of the Council. The Investigator shall not sit on the Disciplinary Committee. No Councillor with direct involvement in the matter shall normally be appointed to the Disciplinary Committee i.e. no member of the Staffing Committee.
- 8.2 The employee will be invited, in writing, to attend a disciplinary meeting. The Disciplinary Committee's letter will confirm the following:
- b) The names of its Chairman and other two members.
  - c) Details of the alleged misconduct, its possible consequences and the employee's statutory right to be accompanied at the meeting.
  - d) A copy of the investigation report, all the supporting evidence and a copy of the Council's Disciplinary Procedure (this document)
  - e) The time and place for the meeting. The employee will be given reasonable notice of the hearing (at least 15 working days) so that they have sufficient time to prepare for it.
  - f) 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.

- g) 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 statements will be submitted to the other side at least five working days before the hearing.
- h) That the employee may be accompanied by a companion, either a trade union representative or a work colleague.

8.3 The disciplinary meeting will be conducted as follows:

- a) the Chairman will introduce the members of the Disciplinary Committee to the employee.
- b) the investigator will present the findings of the investigation report.
- c) the Chairman will set out the council's case and present supporting evidence (including any witnesses).
- d) the employee (or the companion) will set out their case and present evidence (including any witnesses).
- e) any member of the Disciplinary Committee and the employee (or the companion) may question the Investigator and any witness.
- f) the employee (or the companion) will have the opportunity to sum up their case.
- g) the Chairman will provide the employee with the Disciplinary Committee's decision with reasons, in writing, within five working days of the meeting. The Chairman will also notify the employee of the right to appeal the decision.
- h) the disciplinary meeting may be adjourned to allow matters that were raised during the meeting to be investigated by the Disciplinary Committee.

## **9.0 DISCIPLINARY ACTION**

9.1 If the Disciplinary Committee decides that there should be disciplinary action, it may be any of the following:

### **Oral Warning**

9.2 An oral warning is issued for most first instances of minor misconduct. The Council will notify the employee:

- a) of the reason for the warning, the improvement required (if appropriate) and the time period for improvement.
- b) that further misconduct/failure to improve will result in more serious disciplinary action.
- c) of the right to appeal.
- d) that a note confirming the oral 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 six months.

### **Written Warning**

9.3 If there is a repetition of earlier misconduct which resulted in an oral warning, or for different and more serious misconduct, the employee will normally be given a written warning. A written warning will set out:

- a) the reason for the written warning, the improvement required (if appropriate) and the time period for improvement.

- b) that further misconduct/failure to improve will result in more serious disciplinary action.
- c) the employee's right of appeal.
- d) 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.

### **Final Written Warning**

- 9.4 If there is further misconduct during the period of a written warning or if the misconduct is sufficiently serious, the employee will be given a final written warning. A final written warning will set out:
- a) the reason for the final written warning, the improvement required (if appropriate) and the time period for improvement
  - b) that further misconduct/failure to improve will result in more serious disciplinary action up to and including dismissal
  - c) the employee's right of appeal
  - d) that a note confirming the final 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 18 months.

### **Dismissal**

- 9.5 The Council may dismiss:
- e) for gross misconduct.
  - f) if there is no improvement within the specified time period in the conduct which has been the subject of a final written warning.
  - g) if another instance of misconduct has occurred and a final written warning has already been issued and remains in force.
- 9.6 The Disciplinary Committee will consider very carefully a decision to dismiss. If an employee is dismissed, they will receive a written statement of the reasons for their dismissal, the date on which the employment will end and details of their right of appeal.
- 9.7 If the Disciplinary Committee decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file. Action imposed as a result of the disciplinary meeting will remain in force unless and until it is modified as a result of an appeal.

## **10.0 THE APPEAL**

- 10.1 An employee who is the subject of disciplinary action will be notified of the right of appeal. Their written notice of appeal must be received by the Council within five working days of the employee receiving written notice of the disciplinary action and must specify the grounds for appeal.

- 10.2 The grounds for appeal include:
  - a) a failure by the Council to follow its Disciplinary Policy/Procedure
  - b) the Disciplinary Committee's decision was not supported by the evidence.
  - c) the disciplinary action was too severe in the circumstances of the case.
  - d) new evidence has come to light since the disciplinary meeting.
- 10.3 The Appeal will be heard by a panel of three members of the Council and the Investigator. There may be insufficient members of the Council who have not previously been involved. If so, the appeal panel will be a committee of three members of the Council who may include members of the Staffing Committee. The appeal panel will appoint a Chairman from one of its members.
- 10.4 The employee will be notified, in writing, within 10 working days of receipt of the notice of appeal of the time, date and place of the appeal meeting. The employee will be advised that they may be accompanied by a companion, either a trade union representative or a work colleague.
- 10.5 At the appeal meeting, the Chairman will:
  - a) introduce the panel members to the employee.
  - b) explain the purpose of the meeting, which is to hear the employee's reasons for appealing against the decision of the Disciplinary Committee.
  - c) explain the action that the appeal panel may take.
- 10.6 The employee (or his companion) will be asked to explain the grounds for appeal.
- 10.7 The Chairman will inform the employee that they will receive the decision and the panel's reasons, in writing, within five working days of the appeal hearing.
- 10.8 The appeal panel may decide to uphold the decision of the Disciplinary Committee, substitute a less serious sanction or decide that no disciplinary action is necessary. If it decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file.
- 10.9 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.
- 10.10 The appeal panel's decision is final.