

# **POLICY ON DISCIPLINE & GRIEVANCE**

## **The Employment Act 2008**

This Act received Royal Assent on 12 November 2009 and repealed the previous statutory dispute resolution procedure by means of a replacement Code of Practice that has been produced by ACAS.

## **The ACAS Code of Practice**

The key elements of the Code, to which Heptonstall Parish Council is committed, are as follows :

- Employers must deal with disciplinary issues promptly
- They must act consistently
- They must investigate before the disciplinary procedure is invoked
- Any hearing should be heard by someone not directly involved
- The employee must be informed in writing of the 'case to answer' before any disciplinary meeting
- The employee must be allowed to put his/her case before any decisions are made
- The employee must have the right to appeal

A copy of the ACAS Code of Practice and further details are available at [www.acas.org.uk](http://www.acas.org.uk). The 88 page ACAS Guide can be found at [www.acas.org.uk/CHttpHandler.ashx?id=1043](http://www.acas.org.uk/CHttpHandler.ashx?id=1043).

**A. Heptonstall Parish Council**, as a responsible employer, deals with discipline and grievance matters in accordance with current legislation and best advice. The Council is committed to deal with such issues with fairness, consistency and transparency and would always attempt to bring resolution either :

- Informally or
- With the involvement of an independent third party or mediator at any stage or
- Formally following prescribed steps.

**B.** Membership of any required Investigatory, Disciplinary, Grievance or Appeal Panel or identification of an Independent Mediator should be established by members of the Staffing Committee.

## **Discipline**

**“Disciplinary situations include misconduct and/or poor performance.”**

### **Establishing the facts of each case**

1. It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing.

In others, the investigatory stage will be the collation of evidence by the Council for use at any disciplinary hearing.

2. In misconduct cases, where practicable, different people should carry out the investigation and disciplinary hearing.

3. If there is an investigatory meeting this should not by itself result in any disciplinary action. Although there is no statutory right for an employee to be accompanied at a formal investigatory meeting, such a right will be allowed by the Council

4. In cases where a period of suspension with pay is considered necessary, this period should be as brief as possible, should be kept under review and it should be made clear that this suspension is not considered a disciplinary action.

### **Inform the employee of the problem**

5. If it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing within 30 working days of the case being raised in Council. This notification should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, with the notification.

6. The notification should also give details of the time and venue for the disciplinary meeting and advise the employee of their right to be accompanied at the meeting.

### **Hold a meeting with the employee to discuss the problem**

7. The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case. The meeting should be held within 30 working days following the notification above.

8. The nominated members of the Council and the employee (and their companions) should make every effort to attend the meeting.

At the meeting the employer should explain the complaint against the employee and go through the evidence that has been gathered. The employee should be allowed to set out their case and answer any allegations that have been made. The employee should also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They should also be given an opportunity to raise points about any information provided by witnesses. Where an employer or employee

intends to call relevant witnesses they should give advance notice that they intend to do this.

### **Allow the employee to be accompanied at the meeting**

**9.** The employee has a statutory right to be accompanied by a companion where the disciplinary meeting could result in:

- a formal warning being issued; or
- the taking of some other disciplinary action; or
- the confirmation of a warning or some other disciplinary action (appeal hearings).

**10.** The chosen companion may be a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker.

**11.** To exercise the statutory right to be accompanied the employee must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. However, it would not normally be reasonable for the employee to insist on being accompanied by a companion whose presence would prejudice the hearing nor would it be reasonable for the employee to ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available locally.

**12.** The companion should be allowed to address the hearing to put and sum up the employee's case, respond on behalf of the worker to any views expressed at the meeting and confer with the employee during the hearing.

The companion does not, however, have the right 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.

### **Decide on appropriate action**

**13.** After the meeting, decide whether or not disciplinary or any other action is justified and inform the employee accordingly in writing within ten working days.

**14.** Where misconduct is confirmed or the employee is found to be performing unsatisfactorily it is usual to give the employee a written warning. A further act of misconduct or failure to improve performance within a set period (13 weeks) would normally result in a final written warning.

**15.** If an employee's first misconduct or unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the organisation.

**16.** A first or final written warning should set out the nature of the misconduct or poor performance and the change in behaviour or improvement in performance required within the next 13 weeks. The employee should be told how long the warning will remain current (12 months).

Such an 'improvement note' should specify :

- The performance problem

- The improvement that is required
- The timescale for achieving this improvement
- A review date and
- Any support, including training, that the employer will provide to assist the employee

The employee should be informed of the consequences of further misconduct, or failure to improve performance, within the set period (13 weeks) following a final warning. For instance that it may result in dismissal or some other contractual penalty.

If, after the expiry of the time permitted for improvement, it is considered that the required improvement has not occurred a 'final' written warning should be issued. Such a warning should remain current for 12 months and contain a statement that further misconduct or unsatisfactory performance may lead to dismissal. The 'final' notice should be issued by The Council Chairman/Chairman of Staffing Committee.

**17.** A decision to dismiss should only be taken by a person who has the authority to do so. The employee should be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.

**18.** Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. But a fair disciplinary process should always be followed, before dismissing for gross misconduct.

**19.** Acts which the employer regards as representing gross misconduct include things such as theft or fraud, physical violence or bullying, gross negligence, serious insubordination, deliberate and serious damage to property, serious misuse of the Council's name or property, unlawful discrimination or harassment, bringing the Council into serious disrepute, serious incapability at work brought on by use of alcohol or drugs, causing loss damage or injury through serious negligence or a serious breach of confidence.

Lesser sanctions would be appropriate where the following lesser offences are present : Significant inaccuracy in minute taking, refusal to call meetings within required or requested timescale, inability to attend Council meetings, failure to circulate papers and accounting errors.

**20.** Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause the employer should make a decision on the evidence available.

### **Provide employees with an opportunity to appeal**

**21.** Where an employee feels that disciplinary action taken against him/her is wrong or unjust they should appeal against the decision within ten working days following receipt of the notification. Appeals should be heard without unreasonable delay (within 30 working days from the date the appeal is received) and ideally at an agreed time and place. The employee should let the Council Chairman of Staffing know the grounds for the appeal in writing.

**22.** The appeal should be dealt with impartially and wherever possible, by a person or persons who have not previously been involved in the case.

**23.** The employee has a statutory right to be accompanied at appeal hearings.

24. The employee should be informed in writing of the results of the appeal hearing as soon as possible.

### **Special cases**

25. Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure should be followed. Depending on the circumstances, however, it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.

26. If an employee is charged with, or convicted of a criminal offence this is not normally in itself reason for disciplinary action. Consideration needs to be given to what effect the charge or conviction has on the employee's suitability to do the job and their relationship with their employer, work colleagues and parishioners.

## **Grievance**

**“Grievances are concerns, problems or complaints that employees raise with their employers”**

### **Let the employer know the nature of the grievance**

27. If it is not possible to resolve a grievance informally the employee should raise the matter formally and without unreasonable delay with a person who is not the subject of the grievance, preferably the Chairman of the Staffing Committee or Chairman of Council This should be done in writing and should set out the nature of the grievance.

### **Hold a meeting with the employee to discuss the grievance**

28. The employer should arrange for a formal meeting to be held without unreasonable delay (within ten working days) after a grievance is received.

29. The employer, employee and their companions should make every effort to attend the meeting. The employee should be allowed to explain his/her grievance and how it is thought it should be resolved. Consideration should be given to adjourning the meeting for any investigation that may be necessary.

### **Allow the employee to be accompanied at the meeting**

30. The employee has a statutory right to be accompanied by a companion at a grievance meeting which deals with a complaint about a duty owed by the employer to the employee. So this would apply where the complaint is, for example, that the employer is not honouring the employee's contract, or is in breach of legislation.

31. The chosen companion may be a fellow worker, a trade union representative or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany the employee.

**32.** To exercise the right to be accompanied the employee must first make a reasonable request. What is reasonable will depend on the circumstances of each individual case. However it would not normally be reasonable for an employee to insist on being accompanied by a companion whose presence would prejudice the hearing nor would it be reasonable for an employee to ask to be accompanied by a companion from a remote geographical location if someone suitable and willing was available locally.

**33.** The companion should be allowed to address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee during the hearing.

The companion does not however, have the right 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.

### **Decide on appropriate action**

**34.** Following the meeting decide on what action, if any, to take. Decisions should be communicated to the employee, in writing, without unreasonable delay (within 30 working days) and, where appropriate, should set out what action the employer intends to take to resolve the grievance. The employee should be informed that they can appeal if they are not content with the action taken.

### **Allow the employee to take the grievance further if not resolved**

**35.** Where an employee feels that their grievance has not been satisfactorily resolved they should appeal. They should let their employer know the grounds for their appeal without unreasonable delay (within ten working days of receipt of the notification) and in writing.

**36.** Appeals should be heard without unreasonable delay (within 30 working days from the date the appeal is received) and at a time and place which should be notified to the employee in advance.

**37.** The appeal should be dealt with impartially and wherever possible by a person or persons who have not previously been involved in the case.

**38.** The employee has a statutory right to be accompanied at any such appeal hearing.

**39.** The employee should be informed in writing of the results of the appeal hearing as soon as possible.

### **Overlapping grievance and disciplinary cases**

**40.** Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended 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.