



## Capability, Disciplinary and Grievance Procedures

The primary purpose of these procedures is to encourage and maintain good employment relations in the workplace and ensure that your conduct and performance meet our expectations. Having detailed procedures also helps to ensure that everyone is treated fairly, consistently and reasonably and in a non-discriminatory way in accordance with employment legislation.

### Capability Procedure

The primary aim of this procedure is to provide a framework within which managers <sup>1</sup> can work with employees to maintain satisfactory performance standards and to encourage improvement where necessary.

It is our policy to ensure that concerns over performance are dealt with fairly and that employees are given the opportunity to discuss matters at performance review meetings before any formal action is taken, and that they have a right of appeal if they disagree with the outcome. Where possible we would prefer to deal with minor issues of underperformance informally.

### What is covered by the policy?

This policy is used to deal with poor performance in respect of employees with at least two complete years' service. It does not apply to cases involving genuine sickness absence or misconduct. In those cases reference should be made to the appropriate policy.

### Identifying Capability (Performance) Issues

In the first instance, performance issues should normally be dealt with informally between you and the Chair of the Personnel Committee as part of day-to-day management. Where appropriate, a note of any such informal discussions may be placed on your personnel file but will be ignored for the purposes of any future capability hearings.

The formal procedure should be used for more serious cases, or in any case where an earlier informal discussion has not resulted in a satisfactory improvement. Informal discussions may help to:

- clarify the required standards;
- identify areas of concern;
- establish the likely causes of poor performance and identify any training needs; and/or
- set targets for improvement and a time-scale for review.

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<sup>1</sup> Line manager/Councillor

Employees will not normally be dismissed for performance reasons without previous warnings. However, in serious cases of gross negligence, or in any case involving an employee who has not yet completed their probationary period and/or with less than two years' service, dismissal without previous warnings may be appropriate.

If we have concerns about your performance, we will undertake an investigation to decide if there are grounds for taking formal action under this procedure. The procedure involved will depend on the circumstances but may involve reviewing your personnel file including any appraisal records, gathering any relevant documents, monitoring your work and, if appropriate, interviewing you and/or other individuals confidentially regarding your work.

If we consider you are underperforming we may decide to adopt a formal capability review process. The aim of this is to help you improve your performance to levels that are acceptable by us, but it may involve gradually escalating warnings which could ultimately result in a decision that you are not capable of doing the job you are employed to do and your dismissal on grounds of capability.

### **Disabilities**

Consideration will be given to whether poor performance may be related to a disability and, if so, whether there are reasonable adjustments that could be made to your working arrangements, including changing your duties or providing additional equipment or training. We may also consider adjusting this procedure in appropriate cases.

If you wish to discuss this or inform us of any medical condition you consider relevant, you should contact the Chair of the Personnel Committee.

### **Confidentiality**

Our aim is to deal with performance matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with a matter which is subject to this capability procedure.

You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.

You will normally be told the names of any witnesses whose evidence is relevant to your capability hearing, unless we believe that a witness's identity should remain confidential.

### **Capability Review Process**

#### **Stage 1**

You will be invited to a performance review meeting which will normally be held by the Chair of the Personnel Committee and will normally be attended by the Chair of the Parish Council. You will have a right to be accompanied by a colleague or an appropriately trained union representative (see section below).

At the stage 1 meeting if we decide that your performance is unsatisfactory, we will give you a formal warning and put you on a performance improvement plan, setting out:

- The areas in which you have not met the required performance standards.
- Targets for improvement.

- Any measures, such as additional training or supervision, which will be taken with a view to improving performance.
- A period for review.
- The consequences of failing to improve within the review period, or of further unsatisfactory performance.

A performance review meeting may be adjourned if we need to gather any further information or consider matters discussed at the meeting. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

The outcome of the meeting, including the written warning and details of the performance improvement plan, will be confirmed in writing, usually within one week of the performance review meeting. You will have a right of appeal if you do not agree with the outcome of the meeting. Your appeal must be submitted within one week of receiving the written warning and details of the performance improvement plan.

The performance improvement plan will normally remain active for six months, after which time it will be disregarded for the purposes of this capability procedure.

After the active period, the performance improvement plan will remain permanently on your personnel file.

Your performance will be monitored during the review period and we will write to inform you of the outcome:

- if your line manager/Chair of the Personnel Committee is satisfied with your performance, no further action will be taken;
- if your line manager is not satisfied, the matter may be progressed to a Stage 2 performance review meeting; or
- if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

### **Stage 2 Meeting Final Written Warning**

If your performance does not improve within the review period set out in a performance improvement plan, or if there is further evidence of poor performance while your performance improvement plan is still active, we may decide to hold a Stage 2 meeting. We will send you written notification of the meeting, and you will have a right to be accompanied (see Stage 1 above and Right to be Accompanied section below).

At the Stage 2 performance review meeting if we decide that your performance is unsatisfactory, we will give you a final written warning, and amend the performance improvement plan by setting out:

- the areas in which you have not met the required performance standards;
- targets for improvement;
- any measures, such as additional training or supervision, which will be taken with a view to improving performance;
- a period for review; and
- the consequences of failing to improve within the review period, or of further unsatisfactory performance.

A final written warning may be authorised by the Chair of the Personnel Committee, your Line Manager or the Chair of the Parish Council.

A final written warning will normally remain active for six months. After the active period, the warning will remain permanently on your personnel file.

Your performance will be monitored during the review period and we will write to inform you of the outcome:

- if your line manager is satisfied with your performance, no further action will be taken;
- if your line manager is not satisfied, the matter may be progressed to a Stage 3 performance review meeting ; or
- if the manager feels that there has been a substantial but insufficient improvement, the review period may be extended.

### **Stage 3 Meeting: Dismissal or Redeployment**

We may decide to hold a Stage 3 performance review meeting if we have reason to believe:

- your performance has not improved sufficiently within the review period set out in a final written warning;
- your performance is unsatisfactory while a final written warning is still active; or
- your performance has been grossly negligent such as to warrant dismissal without the need for a written warning.

We will send you written notification of the hearing.

At the Stage 3 Meeting, if we find that your performance is unsatisfactory, we will inform you that we have decided that you are not capable of doing the job you are employed to do, and we may consider a range of options including:

- Dismissing you.
- Redeploying you into another suitable job at a lower grade.
- Extending an active written warning and setting a further review period (in exceptional cases where we believe a substantial improvement is likely within the review period).
- Giving a written warning (where no written warning is currently active).

The decision may be authorised by your Line Manager or the Chair of the Personnel Committee.

Dismissal will normally be with full notice or payment in lieu of notice, unless your performance has been so negligent as to amount to gross misconduct, in which case we may dismiss you without notice or any pay in lieu.

## Appeal Procedure

If you feel that any decision about poor performance under this procedure is wrong or unjust you should appeal in writing, stating your full grounds of appeal, to the Chair of the Parish Council within one week of the date on which you were informed in writing of the decision.

If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if your appeal is successful you will be reinstated with no loss of continuity or pay.

If you raise any new matters in your appeal, we may need to carry out further investigation. If any new information comes to light we will provide you with a summary including, where appropriate, copies of additional relevant documents and witness statements. You will have a reasonable opportunity to consider this information before the hearing.

We will give you written notice of the date, time and place of the appeal hearing. This will normally be two to seven days after you receive the written notice.

Where possible, a senior manager who has not been previously involved in the process will be involved in any appeal meeting in addition to your line manager whose decision/view you are appealing against. A member of the Personnel Committee will also usually be present. You will have your usual right to be accompanied (see Right to be accompanied section below).

Following the appeal meeting we may:

- confirm the original decision;
- revoke the original decision; or
- substitute a different outcome.

We will inform you in writing of our final decision as soon as possible, usually within one week of the appeal meeting. Where possible we will also explain this to you in person. There will be no further right of appeal.

## Right to be accompanied

You may bring a companion to any performance review or appeal meeting under this procedure. The companion must be a colleague [or a union representative with appropriate training]. You must tell the manager conducting the meeting who your chosen companion is, in good time before the meeting.

A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

If your companion is unavailable at the time a meeting is scheduled and will not be available for more than five working days we may require you to choose someone else.

If you or your companion cannot attend the meeting you should inform us immediately and we will usually arrange an alternative time. You must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct. If you fail to attend without good reason or are persistently unable to do so (for example, for health reasons), we may have to take a decision based on the available evidence.

## Disciplinary procedure

The aims of this Disciplinary Procedure and its associated Disciplinary Rules are to set out the standards of conduct expected of all staff and to provide a framework within which managers can work with employees to maintain satisfactory standards of conduct and to encourage improvement where necessary.

It is our policy to ensure that any disciplinary matter is dealt with fairly and that steps are taken to establish the facts and to give employees the opportunity to respond before taking any formal action.

### What is covered by the procedure?

This procedure is used to deal with misconduct. It does not apply to cases involving genuine sickness absence, proposed redundancies or poor performance. In those cases reference should be made to the appropriate policy or procedure.

Minor conduct issues can often be resolved informally between you and your line manager. These discussions should be held in private and without undue delay whenever there is cause for concern. Where appropriate, a note of any such informal discussions may be placed on your personnel file but will be ignored for the purposes of any future capability hearings. In some cases an informal verbal warning may be given, which will not form part of your disciplinary records. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).

You will not normally be dismissed for a first act of misconduct, unless we decide it amounts to gross misconduct or you have not yet completed your probationary period.

If you have difficulty at any stage of the procedure because of a disability, you should discuss the situation with your line manager as soon as possible.

### Confidentiality

Our aim is to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.

You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.

You will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against you, unless we believe that a witness's identity should remain confidential.

### Investigations

The purpose of an investigation is for us to establish a fair and balanced view of the facts relating to any disciplinary allegations against you, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from you and any witnesses, and/or reviewing relevant documents. The Chair of the Personnel Committee will usually appoint a Councillor to carry out the investigation.

Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.

You do not normally have the right to bring a companion to an investigative interview. However, we may allow you to bring a companion if it helps you to overcome any disability, or any difficulty in understanding English.

You must co-operate fully and promptly in any investigation. This will include informing us of the names of any relevant witnesses, disclosing any relevant documents to us and attending investigative interviews if required.

### **Criminal charges**

Where your conduct is the subject of a criminal investigation, charge or conviction we will investigate the facts before deciding whether to take formal disciplinary action.

We will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where you are unable or have been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, we may have to take a decision based on the available evidence.

A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if we consider that it is relevant to your employment.

### **Suspension**

In some circumstances we may need to suspend you from work. The suspension will be for no longer than is necessary to investigate the allegations and we will confirm the arrangements to you in writing. While suspended you should not contact any of our stakeholders, suppliers, parishioners, contractors or staff, unless you have been authorised to do so by the Chair of the Personnel Committee.

Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. You will continue to receive your full basic salary and benefits during the period of suspension.

### **Notification of a hearing**

Following any investigation, if we consider there are grounds for disciplinary action, you will be required to attend a disciplinary hearing. We will inform you in writing of the allegations against you, the basis for those allegations, and what the likely range of consequences will be if we decide after the hearing that the allegations are true. We will also include the following where appropriate:

- a summary of relevant information gathered during the investigation;
- a copy of any relevant documents which will be used at the disciplinary hearing; and
- a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality.

We will give you written notice of the date, time and place of the disciplinary hearing. The hearing will be held as soon as reasonably practicable, but you will be given a reasonable amount of time, usually two to seven days, to prepare your case based on the information we have given you.

### The right to be accompanied

You may bring a companion to any disciplinary hearing or appeal hearing under this procedure. The companion must be a colleague. You must tell the Chair of the Personnel Committee who your chosen companion is, in good time before the hearing.

A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so.

If your choice of companion is unreasonable we may require you to choose someone else, for example:

- if in our opinion your companion may have a conflict of interest or may prejudice the hearing;  
or
- if your companion is unavailable at the time a hearing is scheduled and will not be available for more than five working days.

We may, at our discretion, allow you to bring a companion who is not a colleague or union representative (for example, a member of your family) where this will help overcome a disability, or where you have difficulty understanding English.

### Procedure at disciplinary hearings

If you or your companion cannot attend the hearing you should inform us immediately and we will arrange an alternative time. You must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct. If you fail to attend without good reason or are persistently unable to do so (for example for health reasons), we may have to take a decision based on the available evidence.

The hearing will be chaired by the Chair of the Parish Council. A member of the Personnel Committee will also be present. You may bring a companion with you to the disciplinary hearing (see above for guidance on who can accompany you).

At the disciplinary hearing we will go through the allegations against you and the evidence that has been gathered. You will be able to respond and present any evidence of your own. Your companion may make representations to us and ask questions but should not answer questions on your behalf. You may confer privately with your companion at any time during the hearing.

You may ask relevant witnesses to appear at the hearing, provided you give us sufficient advance notice to arrange their attendance. You will be given the opportunity to respond to any information given by a witness.

We may adjourn the disciplinary hearing if we need to carry out any further investigations such as re-interviewing witnesses in the light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

We will inform you in writing of our decision and our reasons for it, usually within one week of the disciplinary hearing. Where possible we will also explain this information to you in person.



## Disciplinary penalties

The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. We aim to treat all employees fairly and consistently, and a penalty imposed on another employee for similar misconduct will usually be considered but should not be treated as a precedent. Each case will be assessed on its own merits.

### Stage 1 - First written warning

A first written warning may be authorised by a section or department manager. It will usually be appropriate for a first act of misconduct where there are no other active written warnings on your disciplinary record.

### Stage 2 - Final written warning

A final written warning may be authorised by the Chair of the Personnel Committee. It will usually be appropriate for:

- misconduct where there is already an active written warning on your record;  
or
- misconduct that we consider sufficiently serious to warrant a final written warning even though there are no other active warnings on your record.

### Stage 3 – Dismissal

Dismissal may be authorised by the Personnel Committee.

It will usually only be appropriate for:

- any misconduct during your probationary period;
- further misconduct where there is an active final written warning on your record; or
- any gross misconduct regardless of whether there are active warnings on your record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal). Examples of gross misconduct.

Alternatives to dismissal: In some cases we may at our discretion consider alternatives to dismissal. These may be authorised by the Personnel Committee and will usually be accompanied by a final written warning. Examples include:

- Demotion.
- A period of suspension without pay.
- Loss of seniority
- Loss of future pay increment or bonus.
- Reduction in pay.

## The effect of a warning

Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that active period.

A first written warning will usually remain active for six months and a final written warning will usually remain active for 12 months. In exceptional cases verging on gross misconduct, a final written warning may state that it will remain active indefinitely. Your conduct may be reviewed at the end of a warning's active period and if it has not improved sufficiently we may decide to extend the active period.

After the active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

### **Appeals against disciplinary action**

If you feel that disciplinary action taken against you is wrong or unjust you should appeal in writing, stating your full grounds of appeal, to the Chair of the Parish Council within one week of the date on which you were informed of the decision.

If you are appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if your appeal is successful you will be reinstated with no loss of continuity or pay.

If you raise any new matters in your appeal, we may need to carry out further investigation. If any new information comes to light we will provide you with a summary including, where appropriate, copies of additional relevant documents and witness statements. You will have a reasonable opportunity to consider this information before the hearing.

We will give you written notice of the date, time and place of the appeal hearing. This will normally be two to seven days after you receive the written notice.

The appeal hearing may be a complete re-hearing of the matter, or it may be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light. This will be at our discretion depending on the circumstances of your case. In any event the appeal will be dealt with as impartially as possible.

Where possible, the appeal hearing will be conducted impartially by the Vice Chair or a Councillor who has not been previously involved in the case. The Investigating Officer, the Chair of the Parish Council and the person who conducted the disciplinary hearing will also usually be present. You may bring a companion with you to the appeal hearing.

We may adjourn the appeal hearing if we need to carry out any further investigations in the light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

Following the appeal hearing we may:

- confirm the original decision;
- revoke the original decision; or
- substitute a different penalty.

We will inform you in writing of our final decision as soon as possible, usually within one week of the appeal hearing. Where possible we will also explain this to you in person. There will be no further right of appeal.

## Grievance procedure

This procedure applies to all employees regardless of length of service. It may be amended at any time and we may depart from it depending on the circumstances of any case.

Where possible we would prefer to deal with minor issues informally and feel that this approach can result in a much more positive resolution. Most grievances can be resolved quickly and informally through discussion with your Chair or a member of the Personnel Committee. If this does not resolve the problem you should initiate the formal procedure below reasonably promptly.

### Step 1: Written grievance

You should put your grievance in writing and submit it to your Chair or member of the Personnel Committee. If your grievance concerns your Chair or a member of the Personnel Committee you may submit it to the Vice Chair.

The written grievance should set out the nature of the complaint, including any relevant facts, dates, and names of individuals involved so that we can investigate it.

### Step 2: Meeting

We will arrange a grievance meeting, normally within one week of receiving your written grievance. You should make every effort to attend.

You may bring a companion to the grievance meeting if you make a reasonable request in advance and tell us the name of your chosen companion. The companion may be either a trade union representative or a colleague, who will be allowed reasonable paid time off from duties to act as your companion.

If you or your companion cannot attend at the time specified you should let us know as soon as possible and we will try, within reason, to agree an alternative time.

We may adjourn the meeting if we need to carry out further investigations, after which the meeting will usually be reconvened.

We will write to you, usually within one week of the last grievance meeting, to confirm our decision and notify of you of any further action that we intend to take to resolve the grievance. We will also advise you of your right of appeal.

### Step 3: Appeals

If the grievance has not been resolved to your satisfaction you may appeal in writing to the Personnel Committee stating your full grounds of appeal within one week of the date on which the decision was sent or given to you.

We will hold an appeal meeting, normally within two weeks of receiving the appeal. This will be dealt with impartially by an independent councillor who has not previously been involved in the case. You will have a right to bring a companion (see above for guidance).

We will confirm our final decision in writing, usually within one week of the appeal hearing. There is no further right of appeal.