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## SIMPSON AND ASHLAND PARISH COUNCIL

### Disciplinary Policy for staff

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**Reviewed and adopted September 2022**

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#### **Glossary of Terms:**

Simpson and Ashland Parish Council (S&APC) is also referred to in this document as The Council.

#### **Statement of Intent:**

1. This procedure is designed to help and encourage any Council employee(s) to achieve and maintain high standards of conduct whilst at work or representing The Council.
2. The aim is to ensure fair treatment and a transparent and consistent approach for all and will be applied in accordance with the Equality Act 2010.
3. This procedure is prepared in accordance with the dismissal and dispute resolution procedures as set out in the Employment Act 2008 and the ACAS Code of Practice 2009.
4. It is designed to help employees improve unsatisfactory conduct and performance in their job. Where-ever possible, The Council will try to resolve its concerns about employee's behaviour informally, without starting the formal procedure set out below.
5. The following procedure, which is non contractual, sets out the action which will be taken when our rules and standards of conduct are breached.

#### **Principles:**

6. The policy confirms that:
  - a) no disciplinary action will be taken against an employee until the case has been fully investigated.
  - b) at every stage in the procedure the employee will be advised of the nature of the complaint against him or her in writing and will be given the opportunity to state his or her case before any decision is made.
  - c) The Council will give employees fourteen (14) working days' notice of any meeting in this procedure.
  - d) 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 (5) working days of the original date.
  - e) at all formal stages the employee will have the right to be accompanied by a work colleague or in the case where the employee is sole employee, a nominated Councillor or accredited trade union official during the disciplinary interview who can offer advice to the employee. The companion can address the hearing, put and sum up the employee's case, confer and respond on behalf of the employee. The companion cannot answer questions on the employee's behalf or address the hearing if the employee does not wish him/her to or prevent the employee explaining their case.

- f) the disciplinary procedure does not apply during the probationary period, but after this period, the procedure applies to all employee(s) irrespective of length of service.
- g) when a disciplinary process has commenced, an employee can choose to exercise his/her right to raise an internal grievance. In this instance the disciplinary matter will be placed on hold until grievances have been aired and actions towards a resolution progressed. If, due to exceptional circumstances, it is appropriate to deal with the two disputes concurrently, specialist advice will be sought.
- h) information about an employee's disciplinary action will be restricted to those involved in the disciplinary process. A record of the reason for the disciplinary action and action taken 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) The Council will take notes at every meeting/hearing of a disciplinary process to record events, debates and discussions and the employee may appoint a note taker. Each party must agree the notes accurately represent each meeting/hearing. Any contemporaneous notes of events which have led to an employment dispute will be required at any stage of an appeal or if the case is taken by either party to a relevant Employment Tribunal. All notes taken remain confidential.
- k) all meetings to do with the disciplinary action will be confidential and exclude the public, unless called as a witness. Any witness will keep confidential all matters reviewed and discussed as part of this process.
- l) no employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty of dismissal without notice or payment in lieu of notice may be applied.
- m) the procedure may be implemented at any stage if the employee's alleged poor performance or misconduct warrants such action.
- n) an employee will have the right to appeal against any disciplinary penalty imposed.

**Examples of poor performance, misconduct and gross misconduct are included in Appendix A.**

**Informal Discussion and Action:**

- 7. Before taking formal disciplinary action, the Chair will make every effort to resolve the matter by informal discussions, usually in a confidential one to one meeting with the employee.
- 8. This may result in the issue of an informal verbal warning, and the employee will be given the opportunity to improve.
- 9. However, where the matter is more serious or informal action has not brought about the necessary improvement the following formal procedure will be used.

**Formal Procedure:**

- 10. The level of warning an employee may receive for misconduct/gross misconduct will depend on how serious The Council considers the alleged actions to be and any previous conduct in all the circumstances. In the event of alleged gross misconduct, the formal process may commence at Stage 4 – see 20 below.

**Investigation**

11. There will be an investigation of the facts. An investigator will be appointed who will be responsible for undertaking the investigation. The investigator will be independent and will normally be a Councillor. He/she has no authority to take disciplinary action. The role is to establish the facts as quickly as possible, through meetings with the employee and any other relevant person and prepare a report that recommends to the HR group whether or not disciplinary action should be taken.
12. The HR group will decide whether further action needs to be taken.

### **Notification of the Disciplinary meeting**

13. If the HR group decides there is a case to answer, it will appoint a disciplinary panel of three Councillors. The Investigator will not sit on the panel. No Councillor with direct involvement in the matter will be appointed to the panel. The employee will be invited in writing to attend a disciplinary meeting. The letter will confirm:
  - the time and location of the disciplinary meeting. The employee will be given five (5) working days to prepare for it,
  - the names of the panel members,
  - details of the alleged misconduct and the employee's right to be accompanied,
  - a copy of the investigators report, supporting evidence, details of the names of witnesses to attend and a copy of The Council's Disciplinary procedure (including Appendices),
  - the employee may be accompanied by a companion, either a trade union representative or person agreed with The Council,
  - confirmation the meeting will be held in private,
  - the letter will specify at which stage the disciplinary procedure is being invoked (see 4 stages below) and if invoked at Stage 4 for Gross Misconduct the letter will warn that a potential outcome could be dismissal.
14. The employee must make all reasonable efforts to attend. Failure to attend any meeting may result in it going ahead and a decision being made. An employee who does not attend a meeting will be given the opportunity to be represented and to make a written submission.
15. If the Council does not take disciplinary action, it may consider whether mediation would be appropriate in the circumstances.

### **Disciplinary Meeting**

16. The Disciplinary meeting will be conducted as follows:
  - the Chair of the disciplinary panel will introduce the members to the employee,
  - the investigator will present the findings of the investigation report,
  - the Chair of the panel will set out The Council's case and present supporting evidence including any witnesses,
  - the employee or companion will set out his or her case and present evidence including any witnesses,
  - any member of the disciplinary panel and the employee (or the companion) may question the Investigator and any witness,
  - the employee or the companion will have the opportunity to sum up his or her case,
  - reasons in writing within five working days of the meeting. The Chair will also notify the employee of the right to appeal the decision,
  - the disciplinary meeting may be adjourned to allow matters that were raised during the meeting to be investigated.

### **Disciplinary Outcomes and Penalties**

### **17. Stage 1 - Oral Warning**

In the instance of a first complaint that conduct does not meet acceptable standards, the employee will normally be given a formal ORAL WARNING. He or she will be advised of;

- the reason for the warning,
- that it is the first stage of the disciplinary procedure,
- the improvement that is required and the timescales for achieving this improvement,
- together with a review date and any support available (where applicable) and
- his or her right of appeal.

A brief note of the oral warning will be kept but it will be spent after 6 months, subject to satisfactory conduct.

### **18. Stage 2 - Written Warning**

If the offence is a serious one, or a repetition of an earlier misconduct resulting in an oral warning or for a different and more serious misconduct, a WRITTEN WARNING will be given to the employee by the Chair of the disciplinary panel. This will give details:

- of the complaint,
- the improvement required and the timescale,
- It will warn that action under Stage 3 will be considered if there is no satisfactory improvement and will advise of the right of appeal,
- A copy of this written warning will be kept on file, but it will be disregarded for disciplinary purposes after 12 months subject to satisfactory conduct.

### **19. Stage 3 – Final Written Warning**

If there is still a failure to improve and conduct or performance is still unsatisfactory, or the misconduct is sufficiently serious, a FINAL WRITTEN WARNING will normally be given to the employee. This will give details:

- of the complaint,
- will warn that dismissal will result if there is no satisfactory improvement and will advise of the right of appeal,
- A copy of this final written warning will be kept by the Chair of the disciplinary panel but it will be spent after 12 months (in exceptional cases the period may be longer) subject to satisfactory conduct.

### **20. Stage 4 – Dismissal or other sanctions**

If conduct is still unsatisfactory and the employee still fails to reach the prescribed standards, or where The Council reasonably believes Gross Misconduct has occurred, DISMISSAL may result. Only the appropriately convened disciplinary panel can take the decision to dismiss an employee. The employee will be given a written statement of allegations against him/her, invited to a meeting and then be notified in writing of the reasons for the decision taken at the disciplinary. Penalties at this stage may include:

- dismissal with notice or summary dismissal (i.e. without any notice),
- Final Written Warning with/without demotion,
- loss of pay or loss of seniority,
- If dismissal is the outcome, the employee will be advised of the date on which employment will terminate. In all cases the employee has a right of appeal,
- Very exceptionally, if an offence of Gross Misconduct is extremely serious an employee can be dismissed immediately without a meeting. In this situation a letter setting out reasons for dismissal would be sent to the employee offering the opportunity to appeal.

## **SUSPENSION**

21. Councils need to consider the implications of such arrangements on its disciplinary and appeal panel plans early on in the disciplinary process.
22. If the employee is accused of an act of gross misconduct (see Appendix A), the HR group has the power to suspend an employee on full pay while The Council/disciplinary panel investigates the alleged offence.
23. Whilst suspended pending disciplinary investigation, the employee is entitled to regular contact with a nominated person at The Council although the convened disciplinary panel charged with the investigation may deny access to premises, equipment or systems.

#### **APPEALS**

24. The Appeals stage of the disciplinary process is part of the Code of Practice to which an employee has a right. It can be exercised after any of the stages of disciplinary action for Misconduct/Poor Performance or Gross Misconduct.
25. An employee who wishes to appeal against a disciplinary decision should inform the Chair of the disciplinary panel within five (5) working days, in writing and giving reasons for the appeal. An Appeal may be raised if:
  - the employee thinks the finding or penalty is unfair,
  - new evidence has come to light,
  - the employee thinks that the procedure was not applied properly.
26. Where possible, the Appeal will be heard by a separate panel of elected members, who have not been involved in the original disciplinary hearing, who will view the evidence with impartiality.
27. The employee will be notified in writing within ten (10) working days of receipt of the notice of appeal, the time, date and venue of the appeal meeting.
28. The employee will have the right to be accompanied by a colleague or accredited Trade Union official or lay member at the appeal hearing.
29. The outcome of the appeal and reasons for it will be advised to the employee within five (5) working days after the meeting and be confirmed in writing.
30. At the Appeal hearing any disciplinary penalty imposed will be reviewed but it cannot be increased. The decision taken at the Appeal hearing will be final.

#### **CRIMINAL CHARGES OR CONVICTIONS**

31. If an employee is charged with or convicted of a criminal offence this will automatically give rise to a disciplinary situation.
32. At this point The Council will give consideration as to how a charge or conviction may affect an employee's ability to undertake his/her job duties and their relationships with the employer, colleagues, subordinates or customers. Only if The Council deems that it has been brought into disrepute through the charge/conviction, will the employee then face disciplinary process.

#### **Appendix A**

## **Examples of poor performance, misconduct and gross misconduct.**

1. For the purposes of this document, the terms poor performance are defined as below, but this is not an exhaustive list:
  - consistent failure to perform work to a reasonable and adequate standard,
  - evidence of negligence or inadequate attention to the requirements of the job.
  
2. For the purpose of this document, the following list provides examples of misconduct which will normally give rise to formal disciplinary action:
  - unauthorised absence from work
  - persistent short-term and/or frequent absences from work without a medical reason
  - lateness for work or poor time keeping
  - inappropriate standard of dress
  - minor breaches of Health and Safety or other written and adopted rules or procedures of the Council.
  - failure to perform the employee's job to the standard expected or in line with their job description/objectives
  - Time wasting
  - Disruptive behaviour
  - Misuse of the council's facilities (e.g. telephones, computers, email or the internet)
  - Refusal to carry out reasonable requests or instructions
  - Smoking in unauthorised areas
  - Failure to follow an agreed council Procedure

This list is not exhaustive and offences of a similar nature will result in disciplinary action being instigated.

3. For the purpose of this document, the following list provides examples of offences which are normally regarded as gross misconduct (defined as misconduct so serious that it strikes at the very root of the employer-employee relationship destroying the employer's trust and confidence in the employee):
  - theft, fraud, deliberate falsification of records, or other acts of dishonesty
  - fighting, assault on another person
  - deliberate damage to property of the Council or members
  - deliberately tampering with a work computer, downloading pornographic material from the internet or circulating such material by email. Installing unauthorised software or viruses onto Council property
  - gross incompetence in the conduct of work
  - gross negligence that results in the Council being put at risk
  - being under the influence of illegal drugs or excessive alcohol
  - acts of incitement towards or actual acts of discrimination, harassment or victimisation including on the grounds of sex, race, colour, ethnic origin, disability, sexual orientation, age, religion or belief
  - serious acts of insubordination
  - serious breach of duty to keep information of the Council, its service providers and its clients confidential
  - any action, whether committed on or off the premises, that is likely to or does bring the council into disrepute
  - serious negligence which causes or might cause significant loss, damage or injury
  - accepting bribes or incentive payments
  - unauthorised use of Council funds
  - working with an external agency to provide information that would be detrimental to and cause commercial risk to the Council
  - failure to comply with duties or legal obligations in respect of Health and Safety

- a criminal offence which renders the employee unsuitable to carry out their duties; or where the penalty imposed by a court of law for an offence makes it impossible or impracticable to continue employment (see 31 to 32 on previous page).

This list is not exhaustive and other offences of a similar gravity will result in disciplinary action being instigated at Gross Misconduct level which carries a potential penalty of dismissal.