



FELSTED PARISH COUNCIL GRIEVANCE AND DISCIPLINARY PROCEDURES

Date: 5 October 2022

CAPABILITY AND DISCIPLINARY PROCEDURE

Introduction

This procedure does not apply to:

- termination of a fixed term contract of employment where the term of that contract expires without being renewed;
- termination of employment by reason of redundancy;
- resignation by the employee or termination by mutual consent.

The time limits referred to in the following procedure may be varied by agreement. An investigation to determine the facts will be carried out by the Chair of the HR Working Group or Clerk to the Parish Council (whichever is most appropriate) who may then take appropriate disciplinary action as provided for in the Disciplinary Procedures in this Section.

At all stages in the Lack of Capability and Disciplinary Procedures the employee shall have the right to be accompanied either by a colleague or trades union representative. The representative may put forward the employee's case and assist during the hearing. The employee shall have the right to state their own case, (including calling witnesses to their defence and to question witnesses bringing evidence against them), and to be interviewed before any action is taken. In respect of oral and written warnings, they shall have the right of appeal to the Appeal Board.

Investigation Regarding Lack of Capability

For procedures involving the lack of capability of the employee, it will be responsibility of the Chair of the HR Working Group or Clerk to offer suitable help and advice to the employee where incompetence such as lack of skill, aptitude and/or ability of unsatisfactory performance is alleged, whether owing to ill health or otherwise. The nature of the alleged shortcoming will determine the nature of the help to be provided. The help should include regular reviews (normally at intervals of not less than four weeks) and one or more of the following:

- (a) counselling or medical advice
- (b) a review of commitments and responsibilities
- (c) availability of training
- (d) opportunity to see good practice in other appropriate establishments.

If, after help and advice over a period of not less than three months, the employee's performance is still unsatisfactory, the Chair of the HR Working Group may inform the Chairman of the Parish Council and should advise the employee in writing that their performance is still unsatisfactory. In doing so the Chair of the HR Working Group will set out the facts and recommend ways of improving the employee's performance together with precise performance objectives and

indicators and giving the employee reasonable time in which to rectify their deficiencies and the date on which these will be reviewed.

Where, after a reasonable time and not later than the review date there has been no marked improvement in performance and that failure is clearly indicated by a failure to reach the objectives and indicators referred to above, or improvement has not been maintained, the Chair of the HR Working Group, after consultation with the Chairman of the Parish Council, will inform the employee in writing that their performance still falls below an acceptable level. They will also be informed in writing of the areas where improvement is still necessary and the period for which appropriate support will continue to be made available.

If, after receiving the help and written warnings outlined above, the employee's performance continues to be unsatisfactory, it may become necessary to initiate formal action to dismiss under the Disciplinary Hearing procedures.

Investigation Regarding Misconduct

Where concern arises about the conduct of the employee, then the Chair of the HR Working Group or Clerk will investigate the complaint or criticism within fourteen (14) days. The employee shall be advised in writing of the complaint and investigation. Once the investigation has been concluded the employee and the employee's representative (if any) will be informed.

If the matter to be investigated is thought at any stage of the investigation to involve Gross Misconduct the Chair of the HR Working Group in consultation with the Chairman of the Parish Council (or in his absence the Vice Chair or other designated Parish Councillor) may immediately suspend the employee from work on Contractual Pay and Benefits whilst the investigation proceeds.

As part of the investigation the Chair of the HR Working Group may (if considered appropriate) undertake a preliminary interview with the employee to determine whether further action is necessary. If the Chair of the HR Working Group decides that a preliminary interview will not be held or if it is decided that further action is necessary then the following procedure will apply.

Disciplinary Procedures

If upon completion of the investigation the Chair of the HR Working Group believes that the employee has committed an act of misconduct but in view of the nature of the misconduct, and of the employee's previous record, an informal warning by letter of concern would be sufficient, then the Chair of the HR Working Group may, without proceeding further, administer it. A copy of the warning will be made and sent to the employee, and may be referred to if the employee commits a further act of misconduct.

If on completion of the investigation the Chair of the HR Working Group considers that a complaint of misconduct may be justified the employee will be invited to a disciplinary hearing to reveal if there is a case to answer. The employee has the right to be accompanied by a colleague or union representative.

In the event of a repetition of the same or related offence, or where the act of misconduct is so serious as to justify a First and Final Written Warning, the Chair of the HR Working Group may issue the employee with a Final Written Warning which shall advise the employee that further repetition of the same or related offence will render the employee liable to dismissal proceedings. The Final Written Warning shall be entered into the employee's file and a copy given to the employee.

All warnings shall be disregarded for disciplinary purposes after a lapse of 3 months in the case of a verbal warning, 6 months in the case of a Written Warning and 12 months for a Final Warning from the date of the warning provided that there has been no further breach of discipline in the

intervening period.

If during the course of the investigation statements have been obtained from witnesses the employee will be given a copy of those statements in advance of the hearing.

If for good cause, the employee is unable to attend the disciplinary hearing it will be adjourned to a date that is mutually agreeable between the employee and the panel but must be within a time frame of not more than 7 days after the original date.

The Disciplinary Hearing

The Disciplinary Panel may adjourn the proceedings at any stage if this appears necessary or desirable. If adjourning for the purpose of enabling further information to be obtained, the Panel will specify the nature of that information. Any adjournment will normally be for a stated period.

On completion of any proceedings, the Panel will retire to consider their decision. When the Disciplinary Panel has made a decision this will be communicated to the employee either orally or in writing as soon as practicable. Any oral communication will be confirmed in writing. In any event, the employee's right of appeal will be explained.

If, following the disciplinary Hearing, the possible dismissal of the employee is to be considered, a separate Hearing will be conducted by the Disciplinary Panel consisting of three Parish Councillors before meeting with the employee. The Chair of the HR Working Group will not be a member of the Panel, but will be asked to present the supporting facts and material.

Where there has been Gross Misconduct the Disciplinary Panel may recommend dismissal without notice. Examples of what the Parish Council consider to be Gross Misconduct are set out at the end of this Section.

Right of Appeal

In the event of a decision to dismiss being made, or the issue of an oral or written warning, the employee shall have the right of appeal to the Appeal Board against the decision imposed by the Disciplinary Panel, or the said warning. The Appeal Panel shall not include any Parish Councillor who formed part of the Disciplinary Panel and shall comprise an odd number, and no less than three, of the remaining Parish Councillors currently serving on the Parish Council.

Such right of appeal must be exercised in writing within seven days of the employee being notified of the penalty. The notice should be sent to the Chairman of the Parish Council who will arrange a hearing before the Appeal Panel, such hearing to take place as soon as is reasonable practicable within fourteen (14) days of the date of receiving the written notice of appeal. The procedure at the Appeal Panel hearing shall be the same as that of the Disciplinary Hearing save that there will be no right of appeal from the decision of the Appeal Panel. Any decision of the Appeal Panel to dismiss the employee shall require a two-thirds majority of those Parish Councillors comprising the Appeal Panel. Failing such a majority, the employee's appeal shall be deemed to have been allowed.

Short Service Dismissal

We retain discretion in respect of the disciplinary procedures to take account of your length of service and to vary the procedures accordingly. If you have a short amount of service (within the probationary period specified in your contract of employment) you may not be in receipt of any warnings before dismissal.

The following could constitute Gross Misconduct. These are only examples and the list is not exhaustive:

- gross neglect of duty

- abuse of authority or refusal to obey lawful instructions
- gross breach of safety requirements likely to endanger other people or the employee or to cause damage to Parish Council property
- being unfit for work owing to the influence of alcohol or drugs
- theft, fraud, deliberate falsification of records or other criminal acts
- fighting and/or assaulting another person
- causing deliberate damage to Parish Council property
- gross negligence which causes unacceptable loss, damage or injury
- sexual misconduct at work or conviction for a sexual offence in a court of law
- harassment or discrimination.

GRIEVANCE PROCEDURE

Purpose

Grievance can arise from a variety of sources. They can arise among members of the Staff, with the Chair of the Parish Council or with the Councillors. They can be of relatively simple nature or of a fundamental importance.

This procedure is designed to enable the Chair of the Parish Council, Councillors and Staff to foster good relations by:

- discouraging the harbouring of grievances;
- assisting the resolution of individual grievances in an atmosphere of trust and confidentiality;
- enabling grievances to be settled as near as possible to their point of origin; and
- ensuring that grievances are dealt with fully, promptly and fairly.

The procedure sets out:

- first an informal process through which most grievances may be resolved without recourse to any subsequent stage;
- secondly, a formal procedure to be invoked when the first stage has failed or is inappropriate.

We operate a separate Whistleblowing Policy to enable employees to report illegal activities, wrongdoing or malpractice. However, where you are directly affected by the matter in question, or where you feel you have been victimised for an act of whistleblowing, you may raise the matter under the Grievance Procedure.

Representation

At all stages, the staff involved are entitled to be accompanied and/or represented by a friend (who may be a colleague or trade union representative). During the formal procedure, witnesses may be called and questioned by either side.

Process

Informal Stage

Where a member of Staff has a grievance which involves another member (or members) of Staff, they should first of all endeavour to resolve it by direct approach to the person(s) concerned.

If considered necessary, the employee should then request a personal interview with the Chair of

the HR Working Group.

The interview should take place within five working days of the request. The Chair of the HR Working Group should seek to resolve the problem personally in consultation with any other member(s) of staff involved and may, by mutual agreement, seek consultation with the Chair of the Parish Council or representatives of professional association/trade unions, as appropriate.

Where an employee has a grievance with a Councillor they should make an appeal to the Chair of the Parish Council.

Formal Stage

Where the matter has not been resolved informally as above, the employee should submit a formal written notice of the grievance to the Chair of the Parish Council, with a copy to any other person(s) concerned. The written notice should:

- include full details of the grievance, together with any supporting documents;
- set out the steps already taken to resolve the issue; and
- state the resolution now requested.

Any other person(s) concerned in the grievance may make a formal written response (together with any supporting documents) to the Chair of the Parish Council, with a copy to the employee raising the grievance. This response should normally be submitted within ten working days of receipt of the written notice of grievance.

The Clerk (where they are not otherwise concerned) may submit a written report to the Chair of the Parish Council, with a copy to the parties concerned, within ten working days of receipt of the written notice of grievance.

A hearing will then be arranged before the appropriate sub-Working Group of the Parish Councillors to consider the grievance. The documents submitted shall be made available to the sub-Working Group in advance. This hearing shall take place after receipt of any written response(s) and/or report and within 7 working days of receipt of the formal notice of grievance.

At least five working day's notice of the hearing will be given to the parties concerned, who may attend in person and be accompanied and/or represented by a friend as above.

The above time limits may be altered by agreement of the parties concerned.

The sub-Working Group, in seeking to resolve the grievance, may adjourn or defer its decision if this is considered appropriate to promote conciliation or obtain further information on relevant factors.

Appeal

Any party to the grievance may appeal in writing to the Chair of the Parish Council within ten working days of receiving the Sub-Working Group's written decision. The notice of appeal should set out the reasons, with a copy to any other person(s) concerned and to the Clerk if they are not involved in the grievance.

The Appeal shall be heard by the Parish Council's Appeals Working Group comprising only members who have not previously been involved. All documents already submitted shall be available to the Working Group. This hearing shall take place within 15 working days of receipt of the notice of appeal.

At least five working days' notice will be given to the parties concerned, who may attend in person and be accompanied and/or represented by a friend as detailed above.

The Appeal Working Group's decision will be confirmed to the parties concerned in writing within five working days. This decision will be final.

The decision of the sub-Working Group, and its reasons, will be confirmed to the parties concerned in writing within five working days.

Record-keeping

Written grievances will be placed on an employee's personnel file along with a record of any decisions taken and any notes or other documents compiled during the grievance process. These will be retained in accordance with the Parish Council's Privacy Policy and Document Retention Policy.

Adopted at the Council meeting held on: 5 October 2022 Minute Reference: 22/219

Next Review Due: November 2025