

Walberswick Parish Council

Disciplinary and Capability Policy

Draft proposed for adoption March 2024

1. Introduction

This policy sets out clearly how Walberswick Parish Council (the Council) intends to formally manage any issues with the conduct or capability of its employees.

Many issues of conduct or capability are easily managed informally and so, in the first instance of minor misconduct or underperformance, the Chair may speak to the employee informally to try to manage the issue outside of this policy. Notes of any such informal discussions about Capability or Conduct will be held on the Employee's file and may be referred to at a later date.

It is recognised that conduct and capability are two very different types of employment issues that need different management. This policy therefore contains separate procedures for each; Part A: issues of misconduct and Part B: issues with level of capability.

The Chair may at any time appoint one of the Employment Committee to do an initial fact find into any concerns raised about an Employee's conduct or capability to establish key facts before deciding to invoke either procedure.

Which part of this policy is invoked will depend on whether the initial facts indicate it is an issue that the employee will not do the work required or whether they cannot do the work required.

Should further information come to light in the course of a procedure being followed, it may be appropriate to change to the other procedure in which case the employee would be notified in writing.

Wherever possible these procedures will be managed and heard by members of the Employment Committee and will be kept confidential within those Councillors. However, the Council reserves the right to nominate any Walberswick Parish Council Councillor to avoid potential conflicts of interest.

2. Scope

This Policy applies to all Employees of the Council.

The Disciplinary & Capability Policy is entirely non-contractual and does not form part of an employee's contract of employment.

Part A – Disciplinary Procedure

3. This Disciplinary Procedure is designed to correct and encourage conduct of employees to achieve and maintain acceptable standards of conduct at all times.

3.1 The following non-exhaustive list provides examples of conduct that may be regarded as misconduct leading to disciplinary procedures:

- Conduct that may bring the Council's image and reputation into disrepute
- Absence without permission
- Failure to comply with rules and regulations applicable to job requirements
- Breach of contractual obligations including not fulfilling hours or absence without permission
- Fraud
- Insubordination
- Any other conduct that may reasonable be considered by the Council as amounting to misconduct

3.2 Investigations and Hearings

3.2.1 The following procedure will be initiated by the Employment Committee where misconduct is suspected. It may be stopped by the Employment Committee at any point or may transfer to the Capability procedure at any stage depending on the information available. The Employee will be notified of this in writing including reasons.

3.2.2 The Chair will inform the Employee in writing making clear that the Disciplinary Procedure is being invoked, what the allegations are, that there is to be an investigation and any necessary adjustments to work.

3.2.3 The Chair will appoint a member of the Employment Committee to carry out a thorough investigation into the alleged misconduct. The investigation should be sufficient to establish the facts taking into account the statements of any available witnesses and giving the employee the right to respond. The investigation should be undertaken as quickly as practicable whilst allowing the full facts of the case to be established.

3.2.4 Upon completion, the investigation will be submitted to the Chair who will decide whether to proceed to a Disciplinary Hearing. The Chair will communicate their decision to the Employee in writing as soon as possible.

3.2.5 Disciplinary Hearings will normally be convened within 10 business days of the Chair informing the Employee that the Disciplinary Hearing is required.

3.2.6 The Chair will appoint a member of the Employment Committee that has not been involved in Fact Find or Investigation, to hear the case at Disciplinary Hearing (the Hearing Councillor).

3.2.7 The employee may be accompanied to any Disciplinary Hearing by a colleague or a Trade Union Representative.

The Employee's chosen companion should be allowed to set out the Employee's case, respond for the Employee to any comments or points made at the Hearing and talk with the Employee during the Hearing.

- 3.2.8 The Employee will be invited in writing, giving at least 3 business days' notice, to attend the Disciplinary Hearing with details of the date, time and location, the Hearing Councillor, their right to be accompanied and the potential outcome of the hearing including to highest potential sanction that may be considered.

The investigation and associated appendices will be provided at the same time.

If the first time or date proposed for the meeting is inconvenient (either for the employee or for the employee's companion, the employee may ask to postpone the meeting by up to 5 business days.

- 3.2.9 The Hearing Councillor will chair the Disciplinary Hearing. The Disciplinary Hearing will allow for the Employee to be questioned by the Hearing Councillor and for the Employee to respond and query any information presented in the Investigation and to provide any further evidence. The Investigating Councillor may also therefore be invited to attend the Disciplinary Hearing.

- 3.2.10 After all representations have been made the Disciplinary Hearing must adjourn to allow the Hearing Councillor to consider all the evidence set out in the Hearing.

- 3.2.11 The Hearing Councillor will reconvene the Hearing to give the outcome with their considerations.

Wherever possible the meeting will be reconvened and verbal outcome given on the same day. If this is not possible, the Hearing Councillor will inform the Employee of the adjusted timescales and the Employee will receive a written invitation to the reconvened meeting.

- 3.2.12 After the Disciplinary Hearing the Hearing Councillor will confirm their decision in writing (within 10 business days) with the details of any applicable sanction and the right to appeal.

3.3 Appeals

- 3.3.1 If the employee wishes to appeal against the decision of the Disciplinary Hearing they must notify the Chair who will usually hear the appeal.

Appeals should be made in writing, setting out the grounds, within 5 business days of receiving written notice of the decision.

- 3.3.2 If the employee notifies the Chair that they wish to appeal, the Appeal Hearing arrangements and timescales will reflect those detailed above for the Disciplinary Hearing.

- 3.3.3 The Disciplinary Hearing Councillor or original Investigating Councillor may

also be asked to attend the Appeal Hearing.

3.3.4 At the Appeal Hearing any new evidence that the employee wishes to put forward to support the grounds for their appeal will be considered and the Investigating Councillor will have the chance to respond and provide further evidence to support their findings.

3.3.5 Once all representations have been made, the Chair will adjourn to consider and review the original disciplinary sanction. The Chair can either uphold the original sanction, change the sanction to a lesser sanction or given not sanction. They may not give a higher sanction.

3.3.6 The Chair will reconvene the Appeal Hearing to give the outcome with their considerations.

Wherever possible the meeting will be reconvened and verbal outcome given on the same day. If this is not possible, the Hearing Councillor will inform the Employee of the adjusted timescales and the Employee will receive a written invitation to the reconvened Hearing.

3.3.7 The Appeal Hearing will not necessarily take place before any disciplinary sanction imposed by the Council takes effect. If the employee's appeal is against dismissal and the appeal is successful the employee will be reinstated and continuity of employment will be preserved.

3.3.8 The outcome of the Appeal Hearing is final and concludes the internal process.

4. Disciplinary Sanctions

4.1 First Warning

First Warnings are issued for first instances of misconduct, depending on the seriousness of the offence. If the employee is given a First Warning they will be warned of the likely consequences of any further disciplinary offences or a failure to improve their conduct to the satisfaction of the Council. A letter will be sent to the employee confirming the First Warning and will be placed on the employee's personnel file. A First Warning will normally remain live for 6 months.

The First Warning stage of the procedure may be omitted if the misconduct is of a sufficiently serious nature.

4.2 Second Warning

In the case of a serious offence or repetition of an earlier minor offence the employee will normally be given a Second Warning. Second Warnings are issued for repeated incidences of misconduct, in particular but not limited to, when there is a live First Warning on file, or for first instances depending on the seriousness of the offence. If the employee is given a Second Warning they will be warned of the likely consequences of any further disciplinary offences or a failure to improve their conduct to the satisfaction of the Council. A letter will be sent to the employee confirming the Second Warning and will be placed on the employee's personnel file. A Second Warning will normally remain

live for 12 months.

The Second Warning stage of the procedure may be omitted if the misconduct is of a sufficiently serious nature.

4.3 Final Warning

In the case of gross misconduct or repetition of earlier offences the employee may be given a Final Warning. Final Warnings are issued for repeated incidences of misconduct, in particular but not limited to, when there is a live Second Warning on file related to similar conduct, or for first instances depending on the seriousness of the offence. If the employee is given a Final Warning they will be warned of the likely consequences of any further disciplinary offences or a failure to improve their conduct to the satisfaction of the Council. A letter will be sent to the employee confirming the Final Warning and will be placed on the employee's personnel file. A Final Warning will normally remain live for 12 months.

The Final Warning stage of the procedure may be considered where Gross Misconduct is proven however sufficient mitigation is proven to warrant an action short of dismissal.

4.4 Dismissal

Dismissal is the ultimate Disciplinary Sanction and will only be considered for Gross Misconduct or previous stages of the Disciplinary procedure have been exhausted. The following is a non-exhaustive list of examples of misconduct that may be regarded by the Council as Gross Misconduct:

- Refusal or repeated failure by an employee to carry out their duties.
- Fraud, misrepresentation or Falsification of documents or information
- Serious breaches of Council Policy or governance
- Unauthorised or illegal disclosure of confidential information.
- Physical violence towards a fellow employee or any other person whilst acting or purporting to act on behalf of the Council.
- Insulting, indecent or offensive behaviour towards a fellow employee or any other person whilst acting or purporting to act on behalf of the Council.
- Serious or repeated bullying or harassment
- Incapacity at work due to the influence of alcohol, unprescribed drugs or any other substance.
- Wilful damage to Council property.
- Theft, unauthorised use or possession of Council property or theft of the property of a fellow employee.
- Serious conduct bringing the Council into disrepute.

Dismissal may be with notice or Summary Dismissal (with immediate effect and no notice paid or otherwise) depending on the seriousness of the offence.

5. Suspension

5.1 At any stage in the procedure, usually only for allegations that may be deemed serious or gross misconduct, the Chair may decide to suspend the Employee.

5.2 Suspension will only be considered after other adjustments to duties have been considered.

5.3 Suspension is a neutral act and may be taken any of the following reasons:

- to protect the employee from further allegations
- to manage the risk for the Council
- to protect the integrity of the investigation
- Suspension will have no detrimental effect on pay or benefits.

5.4 The Chair will remain in regular contact throughout suspension to update the Employee on the case.

5.5 Suspension will be regularly reviewed by the Chair to ensure it is still necessary and to keep the timeframe to a minimum.

Part B – Capability Procedure

6. The aim of this procedure is to provide a framework within which the Council can work with employees to maintain satisfactory performance standards and support improved performance where necessary.

The Council recognises that during an employee's employment, ability to carry out their duties may change due to changes in the job requirements itself or health.

Minor capability issues will be dealt with informally through coaching and training. Informal discussions may be held with a view to clarifying the required work standards and the level of performance expected of the employee, identifying areas of concern, establish the likely causes of poor performance, identifying any training or supervision needs, setting targets for improvement and agreeing a time-scale for review. However, in cases where informal discussion with the employee does not lead to a satisfactory improvement in performance, or where the performance issues are more serious, the following formal capability procedure will be used.

7. Meetings and Support

7.1 The Chair of the Council will usually manage the Capability Procedure at all stages. However, the Employment Committee may nominate another Councillor should they deem it appropriate.

7.2 The Employee has the right to be accompanied by a colleague or Trade Union representative at all stages of the formal Capability Procedure.

The Employee's chosen companion should be allowed to set out the Employee's case, respond for the Employee to any comments or points made at the Capability Review Meeting and talk with the Employee during the Capability Review Meeting.

7.3 The Chair will invite the Employee to a Capability Review Meeting in writing, giving at least 3 business days' notice. The letter will include details of the date, time and location, the Employee's right to be accompanied and outlining the performance issues.

7.4 At the meeting, the Chair will provide sufficient information about the

underperformance for the Employee to understand what standards are expected.

Together the Chair and the Employee should try to establish any causes including reasons why measures taken so far have not led to the required improvement and what further support is needed to help the Employee meet the required standards.

Finally the Chair will confirm a Performance Improvement Plan (PIP) that will include the agreed performance standards expected, how success will be measured what actions either party need to take to allow those standards to be achieved and the timescales in which they are to be reviewed and achieved.

7.5 Following the Capability Review Meeting, the Chair will write to the Employee confirming the issues and solutions discussed in the meeting, provide a copy of the agreed PIP and give a date, time and location of the Stage 1 Capability Review Meeting.

The potential consequences of failing to reach the agreed PIP in this procedure will also be highlighted.

7.6 The Stage 1 Capability Review Meeting will not usually be earlier than the target date for the PIP although one to one informal reviews of the PIP may be carried out in the intervening period to keep the PIP up to date.

At the Stage 1 Capability Review Meeting the Chair and Employee will review the progress made against the PIP. If sufficient performance standards have been achieved and maintained the Chair may close the PIP with no warning issued.

However, if insufficient performance improvement has been made or has not been maintained, the Chair may issue a Stage 1 Capability Warning.

If the PIP has not been achieved, the Chair and the Employee should discuss reasons for continued underperformance and any further support required, updating the PIP.

7.7 Following the Stage 1 Capability Review Meeting the Chair will write to the Employee confirming the outcome. If a warning was issued the letter will include the Employee's right to appeal, an outline of the outstanding issues, the updated PIP and date, time and location of the Stage 2 Capability Review Meeting.

The potential consequences of failing to reach the agreed PIP in this procedure will also be highlighted.

7.8 This process is repeated with the Stage 2 Capability Review Meeting at which the Chair may close the PIP with no further warning issued. However if insufficient performance improvement has been made or has not been maintained, the Chair may issue a Stage 2 Capability Warning.

7.9 Following the Stage 2 Capability Review Meeting the Chair will write to the Employee confirming the outcome. If a warning was issued the letter will include the Employee's right to appeal, an outline of the outstanding issues, the updated PIP and date, time and location of the Stage 3 Capability Review Meeting.

The potential consequences of failing to reach the agreed PIP in this procedure will also be highlighted.

This process is repeated with the Stage 3 Capability Review Meeting at which the Chair may close the PIP with no further warning issued. However, if insufficient performance improvement has been made or has not been maintained, the Chair may consider the following options:

- An extension of time in order to achieve the PIP with a further Capability Review
- Offer redeployment to another role with a trial period
- Dismissal with notice

7.10 The Chair will confirm the outcome to the Stage 3 Capability Review Meeting in writing. Including any next steps and the right to appeal

8. Warnings and timescales

Stage 1 Capability Warnings will remain live for 6 months.

Stage 2 Performance Warnings will remain live for 12 months.

9. Appeals

9.1 The Employee has the right to appeal any Capability Warnings issued and the decision at Stage 3 Capability Review within 5 business days of receiving the written notification of that decision.

9.2 Appeals should be made in writing, setting out the grounds for appeal and addressed to the Vice Chair of the Council who will usually hear the appeal.

9.3 An Appeal Hearing will usually be arranged within 5 business days of receiving the written appeal from the Employee.

9.4 The Vice Chair will write inviting the Employee to an Appeal Hearing giving the time, date, location of the meeting and the right to be accompanied.

9.5 At the Appeal Hearing the Vice Chair will review the PIP and the decisions taken by the Chair along with any representations or evidence that the Employee makes to support their grounds for appeal.

9.6 Following an adjournment, the Vice Chair can decide to uphold the original decision and allow the procedure to resume or to retract the warning and make recommendations for how the procedure should continue.