



LEEK TOWN COUNCIL

GRIEVANCE AND DISCIPLINARY POLICY

Approved 21st May 2024

1 INTRODUCTION:

1.1 Leek Town Council employees are encouraged to achieve and maintain high standards of conduct whilst at work or when representing the Council. The Grievance and Disciplinary Policy aims ensure consistent, transparent, and fair treatment for all.

1.2 **Disciplinary** situations include misconduct and/or poor performance. They are covered in sections 2 to 12 below.

Grievances are concerns, problems, or complaints that employees raise with their employer. They are covered in sections 3 to 19 below.

Legislation covering both disciplinary issues and the resolution of grievances is outlined in section 20.

1.3 This policy does not apply to redundancy dismissals or the non-renewal of fixed term contracts on their expiry. It does not form part of the employees' contract of employment.

1.4 To deal with issues fairly the following principles should be observed:

- employers and employees raise and deal with issues **promptly** without unreasonably delaying meetings, decisions, or confirmation of those decisions,
- employers and employees act **consistently**
- employers inform employees of any complaint about their conduct or performance and give them an **opportunity** to respond before the matter goes any further
- employees inform employers of any concern, problem, or complaint they may have and give them an **opportunity** to respond before the matter goes any further

2 CONFIDENTIALITY:

2.1 The rules of confidentiality governing proceedings are:

- the Council aims to deal with disciplinary and grievance 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, disciplinary or grievance matter
- the employee and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearing
- the employee will normally be told the names of any witnesses whose evidence is relevant to the disciplinary or grievance proceedings.

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3 PRINCIPLES:

- a) No disciplinary action will be taken against an employee until the case has been fully investigated (unless in situations of alleged gross misconduct – see 3.5 below)
- b) At every formal stage in the procedure the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made.
- c) At all formal stages the employee will have the right to be assisted during the disciplinary interview – see section 8.
- d) No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when one of the following penalties may be applied: ~~of~~ dismissal without notice or payment in lieu of notice or demotion, loss of pay or loss of seniority,
- e) An employee will have the right to appeal against any disciplinary penalty imposed.
- f) The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.
- g) If the employee has difficulty reading and writing, or if English is not their first language, any written documentation will be explained to them face-to-face.

4 PROVISIONS:

4.1 Misconduct

Examples of **misconduct** which may give rise to formal disciplinary action are:

- unauthorised absence from work,
- persistent short-term and/or frequent absences from work without a medical reason
- persistent lateness for work or poor time keeping.
- inappropriate standard of dress
- minor breaches of Council rules or procedures
- failure to perform the job in line with its job description/objectives.
- misuse of the Council's facilities (e.g. telephones, computers, email, or the internet)
- refusal to carry out reasonable requests or instructions from a line manager,
- smoking in unauthorised areas,
- failure to follow an agreed Council Policy or Procedure.

Behaviour which may be regarded as **gross misconduct** includes:

- theft, fraud, deliberate falsification of records, or other acts of dishonesty,
- assault on another person,
- deliberate damage to property of the Council, its workers, or members,
- gross incompetence in the conduct of work,
- gross negligence which results in the Council, its employees or third parties being put at risk,
- being under the influence of illegal drugs or excessive alcohol,
- bullying including but not limited to 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 breach of duty to keep information of the Council, its service providers, and its clients, confidential,
- unauthorised access to or manipulation of computer records,
- serious breach of the Council's Security, Health & Safety, Confidentiality or Email and Internet policies,

- 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 from suppliers,
- unauthorised use of Council funds or credit,
- abuse of Council debit cards or supplier accounts.

4.2 Informal Disciplinary Action

Minor misconduct will usually be dealt with informally, and confidentially between the employee and line manager. In the case of the Town Clerk being the individual against whom there is a complaint or allegation, the matter will be handled by the Chair of the Council and the Chairman of the Finance Committee.

4.3 Formal Action

If the Mayor considers that the employee's alleged actions or behaviour can be assessed as misconduct (or gross misconduct) warranting formal disciplinary action (if appropriate, taking into account the employee's previous conduct) then the formal process may commence.

The first step would be to hold an investigation, the purpose being to establish a fair and balanced view of the facts relating to any disciplinary allegations against an employee, before deciding whether to proceed with a disciplinary hearing. 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. Employees must co-operate fully and promptly in any investigation, making all relevant information related to witnesses and documents available.

The Town Clerk or Mayor may, or may not, suspend the employee pending completion of an investigation (see section 6 below).

If, after an investigation, there is a concern that an employee's conduct or behaviour amounts to misconduct or gross misconduct then the Council may decide that there are grounds for disciplinary action.

4.4 Disciplinary Meeting

The employees will be required, in writing, to attend a meeting with a hearing panel (see section 9) to discuss the alleged misconduct. The letter will outline the issues to be covered at the meeting. The employee is entitled to be accompanied (see section 8).

Employees should normally be given at least five days to prepare for the meeting.

At the meeting the line manager will outline the complaint against the employee, presenting the evidence gathered. The employee will also be allowed to ask questions, present evidence, and call witnesses.

If the employee is unable to attend for medical reasons the meeting should be rearranged. If the employee fails to attend the meeting without good reason the meeting can be held in the employee's absence.

5 OUTCOMES AND PENALTIES:

Stage 1 – First Stage Written Warning

In the case of alleged misconduct, as distinct from gross misconduct, and where the complaint relates to the first incident where conduct does not meet acceptable standards, the employee will normally be given a First Stage Written Warning. They will be advised:

- of the reason for the warning,
- that it is the first stage of the disciplinary procedure,
- of the improvement that is required and the timescales for achieving this improvement,
- of a review date and any support available (where applicable)
- that action under Stage 2 will be considered if there is no satisfactory improvement,
- of their right of appeal.

A First Stage Written Warning shall remain operative for six months and the employee will be informed of this in writing. Where there are no further instances of misconduct or poor performance in the review period the warning will no longer be 'live' and will be disregarded for future disciplinary purposes.

Stage 2 – Final Written Warning

If there is a failure to improve and conduct or performance is still unsatisfactory, or the misconduct is sufficiently serious, or the employee is alleged to have committed gross misconduct, a Final Written Warning will be given to the employee. This will give details of the complaint, with a warning that dismissal may result if there is no satisfactory improvement over a given timescale; the employee will be advised of their right of appeal.

A Final Written Warning will remain operative for twelve months and the employee will be informed of this in writing. Where there are no further instances of misconduct or poor performance in this period the warning will no longer be 'live' and will be disregarded for future disciplinary purposes.

Stage 3 – Dismissal or other sanctions

If conduct is still unsatisfactory and the employee fails to reach the prescribed standards, or where the Council reasonably believes gross misconduct has occurred, dismissal may result. The employee will be given a written statement of allegations against them, invited to a meeting, and subsequently be notified in writing of the reasons for the decision taken at the hearing.

Optional Penalties at this stage are:

- dismissal with notice or summary dismissal (ie without any notice),

- Final Written Warning with 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 to appeal.

Where gross misconduct is of an exceptional level an employee can be dismissed immediately. In this situation a letter would be sent to the employee setting out the alleged misconduct which led to the dismissal, with written particulars of the Council's basis for dismissal and the employee's right of an appeal against the dismissal.

6 SUSPENSION:

If an employee is accused of an act of gross misconduct, they may be suspended from work on full pay while the Council investigates the alleged offense. Only the Town Clerk and the Mayor has the power to suspend. Whilst suspended, and pending disciplinary investigation, regular contact with a nominated person at the Council will be maintained although access to premises, equipment, individuals directly or indirectly associated with the Council, or its systems, may be denied.

The individual/s who compile evidence for the disciplinary hearing play no part in the subsequent decision-making to ensure impartiality.

7 APPEALS:

An employee has the right to make an appeal after any of the stages of disciplinary action for misconduct/poor performance or gross misconduct. To appeal the employee should inform the Mayor within five working days, in writing, stating 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 process followed was not in line with this policy.

8 THE RIGHT TO BE ASSISTED:

At any disciplinary interview an employee has the right to be accompanied, to receive support and help in preparing for the disciplinary interview. This right, under the Employment Relations Act 1999, includes trade union representatives (including appropriately accredited official employed by a trade union) or another employee. It does not afford the right to other external persons to represent an employee eg partner, parent, solicitor etc. The Council may, at its discretion, allow the employee to bring a companion to address the hearing.

9 HEARING PANELS:

The appeal will be heard by a panel of three elected members who have not been involved in the original disciplinary hearing, to ensure impartiality. The employee will have the right to be accompanied at the appeal hearing. The outcome of the appeal and reasons for it will be advised to the employee as soon as possible after the meeting and be confirmed in writing. The employee will have the right to challenge the composition of the panel if they feel that any member of the panel is comprised by conflict of interest or previous involvement.

10 NOTE-TAKING:

Each meeting within the disciplinary process shall have an appointed note-taker who will take contemporary notes of all contributions and decisions.

11 GRIEVANCES RAISED DURING THE DISCIPLINARY PROCESS:

Where an employee raises a grievance during disciplinary proceedings the process may be temporarily suspended in order to deal with the grievance.

12 CRIMINAL CHARGES OR CONVICTIONS:

If an employee is charged with or convicted of a criminal offense not involving the Council, this does not automatically give rise to a disciplinary situation. Consideration will be given of how a charge or conviction affects an employee's ability to undertake the performance of their job description. A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if the Council considers that it is relevant to the employee's employment, for instance by bringing the Council into disrepute, by showing that the employee's honesty cannot be trusted, by raising doubts about the employee's relationship with other employees and members of the public, or by any other relevant concerns.

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13 EXAMPLES OF GRIEVANCE:

Employees can legitimately feel aggrieved about concerns over

- employment terms and conditions
- contractual or statutory rights
- health and safety
- work relations,
- the working environment
- new working practices
- bullying and harassment
- organisational change,
- discrimination.

Minor grievances will usually be dealt with informally and confidentially between the employee and line manager/councillor concerned. In the case of the Town Clerk being the individual with a grievance the matter will be handled by the Mayor and the Chairman of the Finance Committee.

14 TREATMENT OF GRIEVANCES:

The Council confirms that

- all grievances will be treated fairly and objectively,
- employees will not be dismissed or suffer disadvantage as a result of raising a genuine grievance (including a situation that arises from an honestly held, but mistaken, understanding),
- if the employee has difficulty reading and writing, or if English is not their first language, any written documentation will ~~also~~ be explained to them face to face,
- any action taken in response to a valid grievance will be monitored and reviewed, as appropriate, to ensure that issues are dealt with effectively.

15 FORMAL GRIEVANCE PROCEDURE:

15.1 Formal Letter

The employee concerned should raise the grievance with a line manager or a councillor who is not the subject of the grievance, in writing and dated, detailing the nature of the grievance.

15.2 Grievance Investigation Meeting

The Town Clerk (or Chair of the Finance Committee if the grievance is raised by the Clerk) will convene a one-to-one meeting with the employee to discuss the grievance, where possible within five working days. In the event that the grievance is raised by the Mayor the meeting will be held with the Chair.

The employee will be notified in writing of the meeting date and time, and the statutory right of employees to be accompanied at Grievance Meetings (see section 17). The employee has the right to call relevant witnesses to the meeting but should notify the employer of their intention to do so in advance.

If the employee or their companion cannot attend the meeting, another meeting will be arranged to take place within five working days of the original date.

The purpose of the meeting is to establish the facts and discuss a potential resolution. The meeting may be adjourned for further investigation to be conducted.

15.3 Decision and Notification

The Town Clerk (or Chairman of the Finance Committee) will decide what action, if any, to take after the meeting. A letter will be sent to the employee, notifying them of the decision within five working days of the initial meeting. The letter will either

- set out what action the Council intends to take to resolve the grievance, or
- where an employee's grievance is not upheld, the reasons why the Council thinks that the complaint is not justified.

The letter will also inform the employee that an appeal can be lodged if they are not content with the decision/action taken.

16 APPEALS PROCEDURE:

If the employee feels that their grievance has not been satisfactorily resolved, they can appeal in writing to one of the Town Clerk, the Mayor or the Chair of Finance Committee (that is, an officer who has not previously been involved in the case) specifying the grounds for their appeal, within five working days of receiving notification of the decision. An Appeal panel will be convened consisting of three councillors who have not previously been involved in the alleged grievance). A hearing will be held within five working days of receiving notification of the appeal from the employee. The employee will be notified in writing of the date and location of the hearing and of the composition of the panel. They will also be informed that they have the right to be accompanied at the hearing. They have the right to challenge the composition of the panel if they feel that any member of the panel is comprised by conflict of interest or previous involvement.

The Panel will consider any representations made by the employee and/or their companion, and those of the officer.

The appeal will be dealt with impartially. Copies of meeting records will be given to the employee, including any formal minutes. However, Leek Town Council may withhold some information in certain circumstances, eg to protect a witness.

The outcome of the appeal will be communicated to the employee in writing within five working days of the hearing, specifying that there will be no further right of appeal.

17 POST-EMPLOYMENT GRIEVANCES:

Wherever possible a grievance should be dealt with before an employee leaves their employment with the Council. However, where an employee had already left employment and the procedure has not been commenced or completed, the employee is encouraged to attend any meetings in accordance with this procedure, so a final decision can be made. If an employee chooses not to attend any meetings, the Council will proceed with the meeting in their absence and make a decision based on all the information and evidence available.

18 THE RIGHT TO BE ACCOMPANIED:

At any grievance interview an employee has the right to be accompanied. This right under the Employment Relations Act 1999, includes Trade Union representatives or another employee. It does not afford the right to other external persons to represent an employee eg partner, parent, solicitor etc. The Council may, at its discretion, allow the employee to bring a companion to address the hearing.

19 WHISTLEBLOWING:

Employees reporting an alleged grievance will be covered by the Council's Whistle-blower Policy.

DISCIPLINARY AND GRIEVANCE PROCEDURES

20 RELEVANT LEGISLATION:

20.1 Employment Act 2008 and the ACAS Code of Practice March 2015

This Policy is prepared in accordance with the dismissal and dispute resolution procedures as set out in this act and code of practice. Failure to follow the ACAS Code of Practice (available at www.acas.org.uk) can lead to an Employment Tribunal awarding an uplift of an award against employers of up to 25%. Tribunals dealing with unfair dismissal claims pay particular attention to whether or not the employer followed proper procedures and acted fairly and reasonably.

20.2 Employment Relations Act 1999.

An employee can ask any other employee or a trade union representative or an appropriately accredited official employed by a trade union to accompany them, to give support and help them prepare for the disciplinary interview.

20.3 Employment Rights Act 1996 and the Health and Safety at Work Act 1974.

Employers have a duty of care towards all their workers and liability under common law and under the **Employment Rights Act 1996 and the Health and Safety at Work Act 1974**. If an employer fails to act reasonably regarding this duty of care by allowing bullying or harassment to continue unchallenged an employee has the option to resign and claim 'constructive dismissal' at an Employment Tribunal.

20.4 Equality Act 2010

Under this act, bullying or harassment related to one of the protected characteristics covered by the act (age, gender, marital status, sexual orientation, race, religion, belief, colour, disability) can be considered unlawful discrimination. Such discrimination could lead to an Employment Tribunal claim against the corporate employer and the perpetrator(s) as individual named respondents.