

## Creech St Michael Parish Council

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## **1.0 Introduction**

This policy is based on and complies with the 2015 ACAS Code of Practice<sup>1</sup>. It also takes account of the ACAS guide on discipline and grievances at work<sup>2</sup>. The policy is designed to help Creech St Michael Parish Council employees to improve unsatisfactory conduct and performance in their job. Wherever possible, the Parish Council will try to resolve its concerns about employees' behaviour informally, without starting the formal procedure set out below.

The disciplinary procedure outlined within the policy, provides a framework within which both employer and employee can address concerns relating to performance and conduct and can be assured that the issues raised are treated seriously and are resolved in a timely and transparent manner.

This policy will be applied fairly, consistently and in accordance with the Equality Act 2010.

## **2.0 Other Policies and Procedures**

This policy should be read in conjunction with the following Parish Council policies.

- Councillor Code of Conduct.
- Standing Orders.
- Grievance Policy.

## **3.0 Terms Used**

Line Manager - the term is used to define the individual to whom an employee of the Parish Council normally reports. This can be both an officer of the Parish Council and a member of the Parish Council.

Days – the term days refers to working days, excluding public holidays.

## **4.0 General Principles**

- This policy and procedure is not a substitute for good management practices and should only be invoked when initial attempts to improve conduct or performance have been made following discussions between the employee and their line manager. However, where there has been a serious first-time breach of disciplinary rules or gross misconduct the formal procedure should be invoked immediately.

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<sup>1</sup> <http://www.acas.org.uk/index.aspx?articleid=2174>

<sup>2</sup> [https://www.acas.org.uk/media/1043/Discipline-and-grievances-at-work-The-ACASguide/pdf/DG\\_Guide\\_Feb\\_2019.pdf](https://www.acas.org.uk/media/1043/Discipline-and-grievances-at-work-The-ACASguide/pdf/DG_Guide_Feb_2019.pdf)

- No disciplinary action will be taken against an employee until the circumstances have been fully investigated.
- At every stage in the procedure the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made.
- The employee has the right to be represented at disciplinary hearings and appeals by a workplace colleague, a trade union representative or a trade union official.
- In all instances of alleged misconduct the employee will be given at least 5 days' notice of the requirement to attend a hearing or appeal. Should the employee fail to attend without an acceptable reason, then the Chair of the hearing or appeal may proceed in the employee's absence.
- Any disciplinary action taken will depend on the nature of the offence, the past recorded behaviour of the employee concerned, the consequence to the Parish Council of the issue and any evidence presented by either the employee or as a result of any investigation..
- Employees' have the right to appeal against any disciplinary decisions.

## **5.0 Roles and Responsibilities**

- Where a minor disciplinary issue arises the employee's line manager will normally consider the matter and will resolve it if they can without recourse to the formal procedure.
- Allegations of more serious misconduct or where a previous warning has been given but the required improvement has not been made, should immediately be referred to the employee's line manager who will then be responsible for nominating an Investigating Officer. If the misconduct relates to the Clerk and RFO, this should be referred to the Chair of the Parish Council.
- The Individual who carries out an investigation should not participate in any subsequent decision to take action under the procedure. Likewise, the individual hearing the case should not be involved in the investigation beforehand. It is important that respective roles are identified at an early stage so that those roles are not compromised. The investigating officer need not be the employee's supervisor or line manager although this would normally be the case.
- Only the Clerk or RFO or Chair of the Parish Council has the right to suspend an employee and provide verbal or written warnings.

## **6.0 Representation**

- Employees have the right to representation at hearings and appeals relating to any stage of the formal procedure. This can be a trade union representative, non-union employee representative or a work colleague.

- Representatives have the right to address the hearing or appeal. They may also ask questions and present the employee's case. However, they have no right to answer questions on the employee's behalf.

## **7.0 The Informal Procedure**

- Where a minor breach of acceptable/established standards of conduct occurs which does not justify formal disciplinary action, the line manager will advise the employee concerned of the conduct or standard expected in the future. In many cases this will provide sufficient encouragement for the employee not to commit further acts of misconduct.
- The employee will be offered guidance, support and where appropriate additional training to achieve the necessary standards. Representation will not normally be appropriate at this stage, but can be considered in certain circumstances by the line manager. Managers should make a note of such informal advice and guidance and should set out in writing the required improvements and standards of conduct that are expected in the future. Records of informal advice/counselling should be kept on employee's personal files. However, the formal procedure will apply when:
  - Previous informal advice or warnings have proved ineffective.
  - The allegation is judged to be of a serious nature.
  - A number of minor allegations are made which taken together constitute a serious breach of behaviour, performance or discipline.

## **8.0 The Formal Procedure**

### **8.1 Suspension**

- In some circumstances the line manager may consider suspension, with pay, pending further investigation or until the disciplinary hearing takes place. Suspension may be appropriate where cases potentially involve gross misconduct, where professional relationships have broken down or there is a risk to the employer's property, the employee or to other people.
- An employee should be advised that suspension in itself does not constitute disciplinary action.
- An employee should be advised of the reasons for suspension in writing. The period of suspension should not normally last for more than 20 days, however where necessary this period can be extended.
- The decision whether suspension is necessary can be reviewed at any time in the disciplinary process.

### **8.2 Investigation**

- Before any decision can be made about whether or not a disciplinary hearing is necessary, an investigation must take place. The employee's line manager (or the Parish Council in relation to matters concerning the Clerk and RFO) should appoint an appropriate Investigating Officer, who could be an external adviser, who will report back with their findings and make recommendations as to whether a disciplinary hearing should be convened.
- The responsibilities of the Investigating Officer are to collect evidence by interviewing any relevant witnesses and gathering all documentation. An investigatory interview should be held with the employee concerned whereby the employee is given 5 days notice of the meeting, in writing, outlining the general nature of the allegation. The purpose of the interview is to present the findings of the investigation to the employee and allow them to answer or shed light on the potential allegations to assist the Investigating Officer to decide if he or she should recommend a disciplinary hearing and/or whether any further investigation is needed.
- For the benefit of the employee and the Parish Council, any investigation must be concluded within a reasonable timescale. If there is a delay in completing the investigation, it is the responsibility of the Investigating Officer to regularly update the employee or their representatives on the progress of the investigation.
- Once the Investigating Officer has gathered all the relevant facts and reviewed the evidence, a report should be drafted to the Clerk and RFO (or Chair of the Parish Council) recommending one of the following:
  - To take no further action and inform the employee accordingly.
  - To advise the arrangement of counselling, training, extra supervision or written advice as appropriate.
  - To progress to a disciplinary hearing.

### **8.3 Arranging a Hearing**

- If, following the recommendations of the Investigating Officer, the Clerk and RFO or the Parish Council concludes that a hearing is required, then the necessary arrangements should be made. The employee should be given at least 5 days notice in writing. The letter should include a clear written statement of the allegation and should enclose any documentary evidence being relied upon and a reminder of the employee's right to be represented. A copy of this policy and procedure should also be included with the correspondence.
- The Investigating Officer is responsible for presenting the case and making arrangements for any witnesses that they will rely upon, to attend the meeting.
- The employee is responsible for arranging any representation they choose to have and any witnesses that they may wish to call. Details of any witnesses the employee intends to call and a copy of all documents that the employee may wish to refer to at

the hearing must be submitted to the Investigating officer at least 3 days prior to the hearing.

- The Clerk and RFO or the Parish Council should make arrangements for an independent human resources advisor to attend the hearing.
- The hearing should take place at a venue that allows for privacy and is accessible for all parties.

#### **8.4 Conducting a Hearing**

- The Panel for a hearing would normally comprise of the Clerk and RFO (or three members of the Parish Council, in relation to matters concerning the Clerk and RFO) and an independent human resources representative to advise, as appropriate. The objective is:
  - To hear the evidence in respect of the allegation, the employee's response and to decide whether or not the allegation is substantiated;
  - if the allegation is substantiated, determine the disciplinary sanction to be applied in light of the seriousness of the offence and having regard to previous relevant disciplinary history.
- The procedure to be followed is:
  - Introduce panel members and specify their roles;
  - clarify the purpose of the hearing and state the allegation;
  - a presentation of the case by the Investigating Officer with witnesses called as necessary;
  - questions by employee and/or their representative of the witnesses;
  - questions by the panel;
  - the employee and/or their representative to state their case with witnesses called as necessary;
  - questions from Investigating Officer of the employee's witnesses;
  - questions from panel;
  - Investigating Officer to sum up;
  - employee/representative to sum up;
  - panel adjourn to make their decision;
  - hearing reconvened and the employee/representative informed of the decision and, if necessary, their rights of appeal.
- Requests for an adjournment can be made at any stage and it is up to the Chairman to decide whether or not a request should be granted.
- The decision of the Panel must be confirmed to the employee in writing within 5 days. The letter should clearly set out:
  - The panel's decision;

- the length of time that any warning or sanction will be active for;
- the expected improvement in conduct with clear milestones toward the expected outcomes;
- any assistance that will be provided to achieve this;
- the employee's right to appeal.

## **8.5 Levels of Disciplinary Action**

- In determining the appropriate disciplinary action, regard should be given to the employee's previous record, the gravity of the offence and any explanation given.
- Although the procedure implies a sequential approach there may be certain circumstances where the matter needs to be considered immediately under Stages 2, 3 or 4 (below).

Stage 1 Verbal Warning. For a minor offence, a formal verbal warning (confirmed in writing) making it clear that further misconduct or underperformance will render the employee liable to further disciplinary action including more severe consequences.

Stage 2 First Written Warning. For a more serious offence or where a previous warning to the employee has not resulted in the required improvement to their conduct.

Stage 3 Final Written Warning. For a sufficiently serious offence, which might warrant only one written warning but is insufficiently serious to justify dismissal, or where previous warnings have been ineffective.

Stage 4 Dismissal with notice. For an act or acts of misconduct or underperformance, other than gross misconduct, by an employee who is under a final written warning. The employee will be liable to dismissal with notice or pay in lieu of notice.

Stage 5 Dismissal without notice. In cases where gross misconduct is established the employee will be liable to summary dismissal, that is without notice or pay in lieu of notice.

## **8.6 Length of Warnings**

- Records of informal meetings and formal warnings will be kept on employee's personal files. In normal circumstances, A verbal warning will be live for 6 months and written warnings for 12 months from the date of the disciplinary hearing. Final written warnings will be live for 2 years.

## **8.7 The Right of Appeal**

- An employee has the right to appeal against disciplinary action resulting in a warning or their dismissal. Three members of the Appeal Committee will hear the appeal,

providing that they have had no previous involvement in the matter, assisted by an independent human resources adviser.

- An employee who wishes to appeal must do so in writing to the Clerk and RFO (or Chairman of the Parish Council, in relation to matters concerning the Clerk and RFO). This must be done within 10 days of the disciplinary hearing informing them of the disciplinary action taken. The appeal letter must set out the grounds for the appeal, normally under one of the following headings:
  - The severity of the disciplinary action;
  - the findings of the Panel on a point of fact which is pertinent to the decision of the hearing;
  - a failure to adhere to the disciplinary policy and procedure.

### **8.8 Arranging an Appeal Hearing**

- The date and time of the appeal hearing will be organised by the Clerk and RFO (or Chairman of the Parish Council, in relation to matters concerning the Clerk and RFO). It is the responsibility of each side to prepare themselves for the appeal, including arranging for any witnesses to attend.
- The Chair of the original Panel and the employee or their representative will, where possible, agree papers for submission to the appeal 5 days prior to the hearing.

### **8.9 Conducting an Appeal Hearing**

- The objective of an appeal hearing is:
  - To review the decision of the disciplinary hearing and decide whether that action is warranted or not;
  - and, if the action is not warranted, to determine what action if any is appropriate;
  - in doing so the Appeal Panel will have regard to seriousness of the offence and any previous relevant disciplinary history.
- The procedure to be followed is:
  - The appellant puts their case including calling any witnesses;
  - the Chair of the original hearing has the opportunity to ask questions of the appellant and witnesses;
  - the Chair of the original hearing who took the disciplinary action puts their case for having done so, which may include calling any witnesses;
  - the appellant has the opportunity to ask questions of the Chair of the original hearing and witnesses;
  - the Appeal Panel has the opportunity to ask questions of both parties and witnesses;

- both parties have the opportunity to sum up should they wish to do so. No new information should be introduced at this stage and the appellant should have the opportunity to sum up last;
  - the appeal is adjourned to allow the Panel to reach a decision;
  - the appeal is reconvened and both parties are informed of the decision;
  - the Appeals Panel write to both parties informing them of their decision within 5 days.
- The Appeals Panel has the right to call its own witnesses should it consider this to be of assistance in making its decision.

## **9.0 Trade Union Officials**

In normal circumstances no action will be taken against an officer of a recognised trade union until the matter has been discussed with a full-time officer of that union.

## **10.0 Guidance**

This policy and procedure confirms:

- Informal coaching and supervision will be considered, where appropriate, to improve conduct and/or performance.
- Employees may be accompanied or represented by a companion – a workplace colleague, a trade union representative or a trade union official – at any investigatory, disciplinary or appeal hearing. The companion is permitted to address such meetings, to put the employee’s case and confer with the employee. The companion cannot answer questions put to the employee, address the meeting against the employee’s wishes or prevent the employee from explaining their case.
- The Parish Council will give employees reasonable notice of any meetings in this procedure. An employee must make all reasonable efforts to attend. Failure to attend any meeting may result in it going ahead and a decision being taken. An employee who does not attend a meeting will be given the opportunity to be represented and to make written submissions. 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 5 days of the original meeting date, unless it is unreasonable not to propose a later date.
- Any changes to specified time limits in the Parish Council’s policy and procedure must be agreed by the employee and the Parish Council.
- Information about an employee’s disciplinary matter will be restricted to those involved in the disciplinary process. A record of the reason for disciplinary action and the action taken by the Parish Council is confidential to the employee. The employee’s disciplinary records will be held by the Parish Council in accordance with the General Data Protection Regulation (GDPR).

- Audio or video tape recordings of the proceedings at any stage of the disciplinary procedure are prohibited, unless agreed by all affected parties as a reasonable adjustment that takes account of an employee's medical condition or disability.
- Employees have the right to appeal against any disciplinary decision. The appeal decision is final.
- If an employee who is already subject to the Parish Council's disciplinary procedure raises a grievance, the grievance will normally be heard after the completion of the disciplinary procedure.
- Except for cases of gross misconduct, when an employee may be dismissed without notice, the Parish Council will not dismiss an employee on the first occasion that it decides there has been misconduct.
- If an employee is suspended following allegations of misconduct, they will be on full pay and only for such time as is necessary. Suspension is not a disciplinary sanction. The Parish Council will write to the employee to confirm any period of suspension and the reasons for it.
- The Parish Council may consider mediation at any stage of the disciplinary procedure where appropriate (for example where there have been communication breakdowns or allegations of bullying or harassment). Mediation is a dispute resolution process that requires the consent of affected parties.

#### Disciplinary Rules

- It is difficult to define all the acts of misconduct which may lead to disciplinary action. Creech St Michael Parish Council will apply a test of reasonableness by considering whether a reasonable person would believe that disciplinary action should result from a certain act or omission.
- The following are examples of the types of conduct which are unacceptable and which may lead to disciplinary action. The list is not exhaustive and other behaviour not listed may lead to disciplinary action when necessary:
  - Poor time-keeping/attendance.
  - Unjustifiable or unauthorised absence from work.
  - Waste, loss or damage of Parish Council property through failure to take due care.
  - Negligence or failure in performance of duty.
  - Being under the influence of alcohol or drugs.

#### Types of Gross Misconduct

- Unacceptable conduct, which may be regarded as gross misconduct, is likely to lead to an employee's summary dismissal. This means dismissal without notice and occurs when the employment relationship between the Parish Council and employee, and the trust which is inherent in that, is irrevocably broken.

- The following list gives examples of matters likely to be regarded as gross misconduct and is not exhaustive:
  - Refusing to follow reasonable management instructions.
  - Theft from the Parish Council, its members, employees or the public.
  - Physical assault or verbal abuse.
  - Fraud or deliberate falsification of records.
  - Falsification of qualifications.
  - Serious negligence which causes unacceptable loss, injury or damage.
  - Serious acts of insubordination.
  - Serious breach of confidence.
  - Use of privileged information for personal gain.
  - Malicious damage to the Parish Council's property.
  - Sexual misconduct at work.
  - Discrimination, victimisation or harassment.
  - Serious breaches of safety rules.
  - Serious incapability through alcohol or drugs.
  - Accessing or distributing pornography, violent or discriminatory content via the Parish Council's IT facilities or social media channels.

#### Training

- Appropriate training will be given to the Parish Clerk or any members who might be involved in disciplinary or appeals meetings to ensure they fulfil their responsibilities under this procedure.