

# St Mabyn Parish Council

## Disciplinary Process and Procedure

### 1 Preamble

- 1.1 This procedure provides the platform for all disciplinary actions relating to employees of St Mabyn Parish Council. The aim is to ensure consistent and fair treatment for any person against whom disciplinary action may be taken.

### 2 Definitions

- 2.1 Offence – an act or instance of committing an illegal act, or breaking a Council rule or procedure, or breaking a commonly accepted rule or principle, or failing to achieve satisfactory performance or an acceptable standard or behaviour level. Examples of offences are listed in Appendix A.

### 3 The Application of the Disciplinary Process

- 3.1 The procedure will apply to all employees. Disciplinary process for councillors will be carried out under the Code of Conduct through the Monitoring Office of Cornwall Council.
- 3.2 All offences shall require the following:
  - 3.2.1 An extra-ordinary meeting of the Parish Council, to be held as-soon-as practically possible, to establish the membership and chairmanship of a Disciplinary Committee. Any councillor involved in, or, with a personal interest in the matter shall be excluded from membership of the committee and paragraph 3.5 of the Cornwall Town and Parish Council's Code of Conduct shall apply to those councillors at the extra-ordinary meeting of the Parish Council.
  - 3.2.2 The Chairman of the Disciplinary Committee to promptly establish the initial facts associated with the offence. In some cases, it may be necessary to hold an investigatory meeting with the employee or other persons before proceeding to any disciplinary action.
  - 3.2.3 The Chairman of the Disciplinary Committee to consult with the Disciplinary Committee so that the most appropriate course of action based on the information available can be made. A decision must be made whether the disciplinary issue is sufficiently serious to be dealt with using a formal approach or whether the informal disciplinary approach is appropriate. If an informal approach is adopted a councillor must be appointed to represent the Parish Council.
- 3.3 All disciplinary matters are to be given high priority and be dealt with formally or informally as quickly as possible, so that facts and events are reviewed and properly recorded, whilst they are still fresh in the mind.
- 3.4 No formal disciplinary action is to take place until an appropriate investigation has collected and considered all the facts.
- 3.5 The act of dismissing an employee is restricted to a resolution of the Disciplinary Committee passed by a majority of those present at a quorate meeting of the Committee.
- 3.6 An employee subject to formal disciplinary action is to be informed, in writing, of the alleged misconduct or other circumstances which has led to the contemplation of dismissal or taking some other formal disciplinary action. Consideration should be given to providing copies of any written evidence. In very exceptional circumstances, where it considers the risk of intimidation or coercion of a witness out-weighs the overriding principle of transparency, the Parish Council Disciplinary Committee may consider it necessary to protect the identity of a witness, either by withholding witness accounts, editing or summarising witness evidence or by any other reasonable means.
- 3.7 The employee under formal disciplinary action is to be invited to a disciplinary meeting of the Disciplinary Committee to discuss the matter and to give the employee a chance to

state their case. The timing of the meeting must allow the employee a reasonable opportunity to consider his/her response to the information provided in 3.6.

- 3.8 The employee must make every effort to attend the meeting.
- 3.9 An employee has the right to be accompanied by a fellow employee or trade union representative (not acting in a legal capacity) when attending a formal disciplinary meeting. The same right applies during the appeal process. Both the employee and authorised companion may make contemporaneous notes. Use of any sound or video recording device will not be allowed.
- 3.10 Employees must make a reasonable request, normally in writing, to be accompanied and identify the companion at least three working days in advance of any formal disciplinary or appeal meeting.
- 3.11 An employee does not have the right to be accompanied during the investigatory meetings as this stage falls outside the scope of formal disciplinary action.
- 3.12 Whatever disciplinary action is decided, any disciplinary penalty is to be fully explained to the employee and confirmed in writing.
- 3.13 Employees are to be informed of their right to appeal against any formal decision made and how to go about that appeal.
- 3.14 If at any stage during the disciplinary process an employee raises a grievance, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently.
- 3.15 Informal disciplinary action will be taken where appropriate. Such informal action is not part of any formal disciplinary procedure. Normally, the outcome of any informal discussions held with an employee will be recorded. Written confirmation of an informal caution will not be considered a formal written warning.
- 3.16 Any information relating to a disciplinary issue must be treated in a suitably confidential manner and kept safely.
- 3.17 A written record of the disciplinary process and action taken shall be produced for all disciplinary matters referred to the Disciplinary Committee including those for minor offences.

#### **4 Investigation**

- 4.1 The initial investigation relating to a disciplinary matter shall normally be conducted by the Chairman of the Disciplinary Committee.
- 4.2 The nature and extent of the investigations will depend on the seriousness of the matter. In certain circumstances, the Council may decide that the investigation should be carried out by independent parties.
- 4.3 Any disciplinary offence which is subject to formal disciplinary action is to be thoroughly and systematically investigated by: -
  - 4.3.1 collecting evidence, which shall be properly recorded;
  - 4.3.2 collecting witness statements, if relevant.
- 4.4 The collection of evidence should be undertaken as soon as possible after the offence has become known and whilst matters are still fresh in the memories of those who may be witnesses.
- 4.5 If an investigatory meeting with the employee is necessary, reasonable notice shall be given.
- 4.6 Details of the investigation shall be retained on the employee's personnel file as appropriate.

#### **5 Informal Disciplinary procedure**

- 5.1 The councillor appointed in 3.2.3 is to discuss the matter with the employee. The aim of the discussion is to agree a solution informally. This allows for problems to be settled quickly.
- 5.2 Informal disciplinary procedures will normally be handled by private discussion and no other parties are entitled to attend.

- 5.3 Any investigation, discussion or outcome relating to an informal disciplinary process will be recorded by the Councillor appointed in 3.2.3. In some circumstances, the Councillor may consider it appropriate to confirm a point to the employee in writing. This will not change the status of the disciplinary process from an informal to formal disciplinary process.
- 5.3.1 Informal disciplinary action will normally be a verbal warning for minor offences, or, an improvement note, or a written warning;
- 5.4 If a disciplinary issue cannot be resolved informally, or, in the opinion of the councillor appointed in 3.2.3 the sanctions available are inappropriate for the seriousness of the offence, the councillor will escalate the process to a formal disciplinary process in accordance with this procedure.

## **6 Suspension Pending Disciplinary Action**

- 6.1 A period of suspension may be considered appropriate by the Council pending formal disciplinary action. Reasons for suspending an employee will be to: -
  - 6.1.1 provide a cooling off period for both the employer and employee;
  - 6.1.2 prevent the commission of further or more serious offences;
  - 6.1.3 restore harmony in the work place;
  - 6.1.4 prevent interference with evidence;
  - 6.1.5 restore safety levels;
  - 6.1.6 protect Council property.
- 6.2 Suspension will only be imposed after careful consideration. The period of suspension shall be regularly reviewed to ensure that it is not unnecessarily protracted.
- 6.3 Such suspension is to be fully explained to the employee and recorded as a non-disciplinary suspension. The suspension is not to be taken into account in forming any disciplinary judgement.

## **7 Formal Disciplinary Action**

- 7.1 Formal disciplinary action will normally be either: -
  - 7.1.1 A verbal warning for minor offences where informal action or an improvement note or written warning is inappropriate;
  - 7.1.2 A written warning or an improvement note; normally for unsatisfactory performance or misconduct;
  - 7.1.3 Where appropriate, a written warning may be described as a final written warning; normally for serious misconduct;
  - 7.1.4 Dismissal; normally but not exclusively for gross misconduct;
  - 7.1.5 Some other sanction short of dismissal such as demotion, loss of seniority, disciplinary transfer, loss of any pay increment or disciplinary suspension without pay.
- 7.2 In all cases involving formal disciplinary action appropriate written management records shall be made by the Disciplinary Committee, which should normally be held on the employee's personnel file with copy in a sealed envelope within the Chairman's Pack.
- 7.3 The decision of any formal disciplinary action will be confirmed in writing to the employee and will normally include: -
  - 7.3.1 a description or level of the disciplinary penalty imposed;
  - 7.3.2 the nature of the offence;
  - 7.3.4 the date of the offence, if appropriate;
  - 7.3.5 the nature and extent of the required improvement in conduct, behaviour or performance, if any;
  - 7.3.6 the date by which this improvement is to be achieved, if any;
  - 7.3.7 the date on which the improvement will be reviewed, if required;
  - 7.3.8 the consequences of not reaching the improvement demanded, if any;
  - 7.3.9 and in respect of dismissal: -
    - 7.3.9.1 the effective date of termination of employment and period of notice, if applicable;
    - 7.3.9.2 details of any outstanding money owed to the employee or by the employee to the Council;
  - 7.3.10 the timescale for lodging an appeal and how it should be made.
  - 7.3.11 alternatively, where no further action is to be taken this shall be confirmed in writing.

- 7.4 A written record of the formal disciplinary action will be kept but normally, and unless there are special reasons, the record will be disregarded for disciplinary purposes after a specified period, typically: -
- 7.4.1 up to 6 months for a verbal warning;
  - 7.4.2 up to 12 months for an improvement note or first written warning;
  - 7.4.3 up to 24 months for a final warning or some other sanction short of dismissal but this period could be extended in exceptional circumstances up to the duration of the employee's employment with the Council.

## **8 Appeal Procedure**

- 8.1 In all cases involving formal disciplinary action the employee must be informed of their right to appeal.
- 8.2 The employee must inform the Council in writing of his/her wish to appeal against the disciplinary action within five working days of receipt of the disciplinary decision and fully state the grounds for their appeal.
- 8.3 On receipt of a request to appeal against a disciplinary action, an extra-ordinary meeting of the Parish Council, must be held as-soon-as practically possible, to establish the membership and chairmanship of an Appeal Committee. Any councillor involved in, or, with a personal interest in the matter shall be excluded from membership of the committee and paragraph 3.5 of the Cornwall Town and Parish Council's Code of Conduct shall apply to those councillors at the extra-ordinary meeting of the Parish Council.
- 8.4 The appeal shall be heard by the Appeals Committee composed of members not previously involved in the disciplinary process that is the subject of the appeal.
- 8.5 The employee is to be invited to a meeting to discuss the appeal, normally within 15 working days of receipt of the written notice to appeal.
- 8.6 The employee must make every effort to attend the meeting.
- 8.7 Where an appeal is to be launched after a dismissal notice has been issued, the dismissal is to be implemented and the appeal is to be made as a former employee.
- 8.8 The appeal hearing can be adjourned at any time by the Parish Council Appeals Committee for any further investigation it considers necessary.
- 8.9 Following the appeal meeting the Council may authorise a further investigation based on the information presented at the appeal.
- 8.10 The Council shall inform the employee of the final disciplinary decision within five working days of the appeal meeting or when the result of any further investigation has been reported and considered.
- 8.11 The decision of the appeal meeting will be final.

*Adopted by St Mabyn Parish Council at its meeting held on the 5<sup>th</sup> December 2017, Minute reference Item 10. refers*

## Appendix A

**Minor** offences include but are not limited to: -

- unsatisfactory timekeeping or absenteeism;
- poor or unacceptable work performance;
- failure to comply with Council policies;
- inappropriate personal appearance or attire; and
- inappropriate use of Council facilities.

**Misconduct** offences include but are not limited to: -

- continued unsatisfactory timekeeping or absenteeism;
- continued poor or unacceptable work performance;
- continued failure to comply with Council policies;
- serious breach of Council policies;
- unacceptable personal appearance or attire;
- continued inappropriate use of Council facilities;
- failure to comply with a reasonably given instruction;
- unacceptable attitude to or behaviour towards other staff, management, clients, suppliers or the public;
- non-compliance with professional codes of practice; and
- failure to comply with Council safety provisions.

**Serious Misconduct** offences include but are not limited to: -

- continued unsatisfactory timekeeping or absenteeism;
- continued poor or unacceptable work performance;
- serious or continued breach of Council policies;
- abuse or misuse of Council information systems, e-mail, intranet or internet, social media;
- continued failure to comply with reasonably given instruction;
- harassment or victimisation of other employees, contractors, clients or visitors;
- serious or continued non-compliance with professional codes of practice; and
- serious or continued breach/neglect of health and safety provisions.

**Gross Misconduct** offences include but are not limited to: -

- consistent failure to improve timekeeping and absenteeism;
- consistent failure to improve work performance;
- serious or consistent breach of Council policies;
- serious/illegal abuse or misuse of Council work equipment and systems including e-mail, intranet or internet, social media;
- wilful disobedience, or serious insubordination, or consistent failure to comply with reasonably given instruction;
- wilful harassment, bullying or victimisation of other employees;
- blatant/wilful or persistent non-compliance, or serious breach of professional codes of practice;
- wilful/dangerous breach of Council health and safety provisions;
- serious negligence which causes loss, damage or injury;
- gross negligence;
- being under the influence of alcohol or drugs at work;
- unlawful or unfair discrimination against members of staff, contractors, clients or visitors on the grounds of sex, sexual orientation, age, race, religion, belief, nationality, colour, ethnic origin, marital or civil partnership status, disability;
- indecent or disorderly behaviour or acts of incitement;
- fraud; deliberate falsification of records and making false statements to the Council with regard to matters of employment;
- unauthorised access to confidential information;
- fighting, assault (including verbal assault) or threat of assault on another person;
- breach of duty regarding non-disclosure of confidential information;
- conduct or action which brings the Council's name or reputation into serious disrepute;
- conviction of a criminal offence which makes the employee unsuitable for their type of work;
- theft, deliberate damage or unauthorised possession of Council or personal property; and
- subsequent misconduct offence following final warning.