ABBOTS LEIGH PARISH COUNCIL

Grievance and Discipline Procedure

From 1st October 2004 all employers have been required to have in place a formal Grievance & Discipline procedure.

The previous exemption for an organisation with less than twenty employees has been withdrawn. (Employment Act 2002) Dispute Resolution Regulations 2004.

The part of the Act (Dispute Resolution 3-Step & 2-Step process) that relates to this matter will also require that an employer goes through a careful internal process of investigation. Not specified anywhere in the Act is the hope that both sides make every attempt at conciliation. Any Employment Tribunal that subsequently becomes involved will take this process into account. It is expected that minor lapses by an employee will be dealt with reasonably by internal processes.

CONCILIATION AND MEDIATION

Before resorting to formal procedures from the employee or from the Council it is the policy of the Council that discussions between both parties should be entered into with the express purpose of resolving the matter through a process of mediation seeking conciliation. Where necessary the Council will seek the services of an external expert to forward this process to reach a conclusion satisfactory to both parties in the dispute.

GRIEVANCE PROCEDURE

The objective is to have in place a framework for dealing swiftly and in a fair and consistent manner with a complaint from an employee that has not been dealt with by the process of good management in the workplace.

Having a formal grievance procedure acknowledges the rights of employees in Employment Law to be treated fairly and to be able to seek redress for a grievance that is related to their employment.

The Procedure – 3-Step Grievance Procedure

Step-1: The employee sets down in writing and submits to the employer the alleged grievance;

Step-2: A meeting must be held with the employee for a discussion of the matter. Afterwards the employer must tell the employee the decision and that he/she has the right of appeal. Both the decision and the right of appeal must be confirmed in writing;

Step-3: If the employee exercises his/her right of appeal there must be another meeting to hear the appeal. The final decision must then be given and confirmed in writing.

Modified 2-Step Procedure after employment has ended

Step-1: The employee sets down in writing and submits to the employer the alleged grievance;

Step-2: The employer gives his response in writing.

The 3-Step process will not apply where it is clearly unreasonable to do so as the employee has left. In which case the modified 2-Step procedure will apply and it is agreed in writing by both parties. This is an agreement not to have a face-to-face meeting, perhaps for reasons of long travel times, or that the employee is now working elsewhere and time off to attend a meeting would be difficult.

A House of Lords ruling relating to a case of Discrimination has made it possible for a complaint of discrimination to be brought against a former employer after the employee has left.

KEY FEATURES

- Should be part of the Terms and Conditions in the employees contract
- Must be seen to be fair and reasonable
- Matters must be quickly dealt with (3-5 Working Days)
- Must let the employee express his/her grievance to a/the senior person
- Given an opportunity to make clear the grievance
- Get (if possible) a swift resolution of the problem through conciliation
- Ensure that swift action matches swift promises - And are kept!
- Provide the employee with all information necessary for them to progress their grievance to an arbitrating body, if necessary
- Provides for an appeal

LACK OF PROCEDURE

The results of a lack of a formal procedure can be several. Crucial are:

- Employment Tribunal Cases
- Damage to the Council
- Potentially expensive legal consequences
- Disciplinary Proceedings
- Needless loss of an employee

THE LAW & EMPLOYEE RIGHTS (Some of It!)

- Employment Rights Act 1996
- Employment Relations Act 1999
- Employment Act 2002
- Dispute Resolution Regulations 2004
- Protection From Harassment Act 1997
- Health & Safety at Work Act 1974
- Management of Health and Safety at Work 1999
- The Sex Discrimination Act 1975
- The Race Relations Act 1976 (Amendment) Regulations 2003, SI 2003/1626 & as amended 2000
- Equal Pay Act 1970 (Amendment) Regulations 2003, SI 2003/1656
- Employment Equality (Sexual Orientation) Regulations 2003 SI 2003/166
- Employment Equality (Religion or Belief) Regulations 2003, SI 2003/1660
- Disability Discrimination Act 1995 (Amendment) Regulations 2003 SI 2003/1673
- Working Time Regulations 1998 (SI 1998/1833)
- National Minimum Wage (Enforcement Notices) Act 2003

• Equal Pay Act 1970

REALLY IMPORTANT BITS

The Employment Rights Act 1996 makes it mandatory for an employee to have a written statement of employment particulars that spells out the main terms and conditions of that employment. This must include directions to the person to whom the employee can apply for redress for any grievance related to his/her employment and appeal against any decision.

NB.

An employer cannot get away through omitting this part of the written statement of particulars of employment (contract). The failure by an employer to indicate where the policy on discipline and grievance may be found and to operate the statutory procedures under the Dispute Regulations 2004 could offer the employee a case based on automatic unfair dismissal grounds if brought to an Employment Tribunal.

The Employment Relations Act 1999 s.10-15 requires employers to allow an employee to be accompanied by a person of their choice at a grievance meeting. Self-employed people are covered by this provision.

- The employee is protected against victimisation by the employer through seeking grievance procedures
- The chosen person may address the hearing on behalf of the employee, ask questions & be given time in private to confer with the employee
- The rights do not extend to answering questions on behalf of the employee
- Failure to allow an employee to be accompanied may result in a complaint to an Employment Tribunal and, possibly, a quite substantial award made against the Council

THE CONCEPT OF NATURAL JUSTICE

The following are time-tested benchmarks that, if not followed, inevitably work to the disadvantage of an employer at the Employment Tribunal stage:

- Grievance procedures should be fair and seen to be fair
- A complete investigation of the matter should be carried out by a non-involved individual to establish the facts of the matter
- Every employee has a right to be heard
- It is the *facts* that matter
- Any employee who has any special needs requirements should be provided with all necessary assistance to permit them to have a fair and just hearing
- An employee who has brought a grievance should not subsequently be disadvantaged

THE PENALTY FOR NON-COMPLIANCE

The employer that does not comply faces an almost certain breach of contract claim by an employee. The employee will be entitled to resign and claim constructive unfair dismissal. In addition, at an appearance before a Tribunal, failure to comply with the steps set down will almost certainly result in a finding against the party who has failed to comply. Tribunals will also have the ability to, in effect, fine that party.

OTHER LEGISLATION

- Data Protection Act 1998
- Freedom Of Information Act 2000
- Public Interest Disclosure Act 1998 (Whistle Blowers)

Both the Data Protection Act and the Freedom Of Information Act have implications in the area of record keeping and access. Records in relation to Grievance (and Disciplinary) matters are classified as confidential. Neither the public, *nor other members of the organisation without a specific need to know* , have access. A copy of the record of the proceedings and results must be given to the employee.

THE GRIEVANCE POLICY DOCUMENT

THE AIM OF OUR GRIEVANCE POLICY IS TO RESOLVE ANY GRIEVANCE AS SWIFTLY AND FAIRLY AS POSSIBLE WE WILL DEAL WITH ANY MATTER RELATING TO EMPLOYMENT WITH THE EXCEPTION OF MATTERS OF CONDUCT AND CAPABILITY AND THE OUTCOME OF DISCIPLINARY PROCEEDING

YOU HAVE THE RIGHT TO BE ACCOMPANIED BY A PERSON OF YOUR OWN CHOOSING WHO MAY SPEAK ON YOUR BEHALF, ASK QUESTIONS, BUT NOT ANSWER QUESTIONS PUT DIRECTLY TO YOU.

YOU AND YOUR COMPANION / REPRESENTATIVE WILL BE PROVIDED WITH ANY MATERIALS, PAPERS, etc. NECESSARY FOR YOU TO MAKE YOUR CASE WE WILL MAKE EVERY EFFORT TO ACCOMMODATE ANY PERSON WHO HAS SPECIAL NEEDS IF WE ARE ADVISED OF THE SITUATION YOU HAVE THE RIGHT TO APPEAL AGAINST A DECISION OF THE PANEL THE PROCEEDINGS

- The time and place must be notified and agreed with adequate time to prepare and attend
- It should not be at some venue that is particularly inaccessible
- Provision should be made for any person with a disability or whose first language is not English
- The proceeding should not be interrupted for any reason (Health &Safety excepted)
- The person accompanying the employee should be notified.
- The person accompanying the employee must be given time off to attend
- A written record of the proceedings must be kept
- The procedure must be the same for all employees
- The proceedings should not be held in quasi-judicial language or process but be simple to follow and understand addressing the facts
- The proceedings should be timely. (Justice is not served by allowing the matter to hang fire)
- Allow for the proceedings to be conducted by an impartial external; facilitator

Any employee who presents with a grievance should be encouraged in the first place to resolve the matter, if possible, by informal discussion with a colleague / senior employer representative. Wherever possible conciliation of the dispute should be sought, using the services of a skilled mediator and arbitrator if necessary. Where this matter is difficult then the services of an impartial mediator/arbitrator are recommended.

COLLECTIVE GRIEVANCES

If the grievance is presented by a group of employees then this should be dealt with directly by the most senior management.

THE RACE RELATIONS (AMENDMENT) ACT 2000

All employers should note the necessity of making every effort to ensure the equality of every aspect of the procedure for any person who is of ethnic origin other than English. Under the provisions of the Act all Local Councils have a General Duty to comply. As colleagues will be aware that extends to the collection of statistics and completing returns on an annual basis. Any employing Council that did not make every effort to comply with the Act would be in a potentially very serious breach. The possibility is a complaint either to an Employment Tribunal or to the Equal Opportunities Commission.

WHAT COMES NEXT?

When every aspect has been explored the appropriate remedial action, if justified, should be taken. This may mean making changes to procedures, working practices or the behaviour of others.

It is essential that what is agreed to be done is seen to be done. So,

- Consider implications and costs
- Do not allow too much time to elapse before making clear what is expected
- Agree and publicise workable solutions
- Monitor the results
- Record and learn for the future

FINALLY

Many people in positions of authority assume (quite wrongly) that they are managers competent in every field. Even basic interviewing is a learned skill. The process of dealing with people in a Grievance or Disciplinary situation requires even more skill and knowledge. To fail to be adequately prepared and trained may well be a recipe for total disaster. The penalties for getting it wrong range from embarrassing to disastrous for a Council. The maximum award for unfair/constructive dismissal could be as high as £55,000 (2004). Plus the damage to reputations. Further, even at the initial presentation stage at an Employment Tribunal could result in unnecessary cost. Under the Employment Act 2002 section relating to the powers of a Tribunal, a Tribunal will have the power to -in effect - fine an employer up to £5000 (or for that matter an employee) who does not bring their case properly prepared and presented. In addition the new Act provides for the increase or decrease of the award made by between ten and fifty percent for failure to follow the statutory procedure.

NEW LAW - EMPLOYMENT ACT 2002 – DISPUTE RESOLUTION REGULATIONS 2004

Within this Act is the provision for changes to the way in which Employment Tribunals work. A corollary of this is that a 3-Stage, or 2-Stage modified process (after the employment has ended), of bringing a case to them is required of an employer/employee. Put simply, it is that a full internal *and if possible* conciliation process takes place within an organisation to try and sort out problems and reconcile issues before the matter reaches the stage of a Tribunal hearing.

The Procedure – 3-Step Dismissal Disciplinary Procedure

Step-1 : The employer sets down in writing and gives to them the complaint of the employee's conduct, capability or other matter that could result in disciplinary action or dismissal;

Step-2: A meeting must be held with the employee for a discussion of the matter. After the employer must tell the employee the decision and that he/she has the right of appeal. Both the decision and the right of appeal must be confirmed in writing;

Step-3: If the employee exercises his/her right of appeal there must be another meeting to hear the appeal. The final decision must then be given and confirmed in writing. Modified 2-Step Procedure after employment has ended

Step-1: The employer informs the ex-employee in writing details of the alleged misconduct that has led to his/her dismissal, what evidence there was for the decision to dismiss, and the right of appeal against the decision;

Step-2: If the employee wishes to exercise his/her right of appeal then a meeting must be convened. The final decision must then be given and confirmed in writing.

Disciplinary matters will come about in any work place from time-to-time. There will be a number of reasons why this occurs. One cause, amongst others, is where the relationship of mutual trust and respect between the employee and the employer has broken down, or been broken down. Employers should take every possible step through good management practices and procedures to ensure that this situation has not been reached by being ineffective in their management of work and employees. (See Grievance Procedures).

Disciplinary proceedings are not to be considered as a first step (Excepting exceptional circumstances of Gross Misconduct), or purely as a means of imposing strictures on an employee, especially if the first thought is that it is a means of dismissing the person. This is bad management and might well be a fast track route to an Employment Tribunal with a case of Unfair Dismissal.

COMMON PROBLEMS

These often arise from a few situations:

- Failure to follow instructions
- Breaches of Council policy
- Breaches of regulations governing conduct in the workplace
- Behavioural & conduct problems
- Breaches of confidentiality
- Failure to comply with lawful requirement of the employer
- Unauthorised absence
- Misuse of Council property/facilities
- Failure to comply with workplace targets

However, a distinction should be drawn between the conduct of an employee and their capability. In the case of a problem due to capability there needs to be a very careful consideration of the factors. These may be lack of skill or knowledge; illness or some unrecognised disabling factor, or some external factors non-workplace based having an influence on performance in the workplace (Serious home-based problems). An employer should always explore the factors with care and sensitivity. If the matter is

based on lack of skill or knowledge then the employer has a duty to ensure that by training, mentoring, and guidance, the employee has an opportunity to improve. The matter can then be re-assessed after a reasonable interval.

WHY HAVE A DISCIPLINARY PROCEDURE?

Put simply it gives everyone a firm base to know where they stand. Bear in mind that the failure to have any standards not only means a sloppy organisation, it inevitably means that if an employee is challenged on an issue she/he might justifiably reply:
"I wasn't told that and it doesn't say that anywhere. (So, Ya boo sucks!)" It means that an employer is on shaky ground when it comes to trying to make discipline stick – unless it is for obvious gross misconduct.

THREE IMPORTANT ACTS

Employment Rights Act 1996 - Employment Relations Act 1999 – Employment Act 2002

If you end up in front of an Employment Tribunal because you have dismissed someone they will expect you as the employer to be able to show under the first that: • You have a clear reason for dismissal related to the employees conduct

- That you have acted reasonably and fairly in treating this as a sufficient reason to dismiss the person The second Act requires that you will have made every effort to ensure that the employee is aware that someone may accompany them to the disciplinary hearing. This applies even if you are classed as Self-employed.
- The Act enshrines the principle that no person will be victimised as a result of acting as a representative of the person before the disciplinary hearing
- The employer must postpone the hearing for up to five working days from the day after the hearing was called for if the chosen representative is not available
- The representative may ask questions of the hearing panel and speak on behalf of the employee brought before the panel, but may not answer questions put to the employee

As soon as the provisions of the Employment Act 2002 – Dispute Resolution Regulations 2004 are in place on the 1st October 2004 you will have to have in place a formal internal process with a policy laying down procedures that is made known to all employees.

CONTRACTS

The disciplinary procedures and appeals process should be incorporated into the wording of a current contract and the stages of the disciplinary process must be spelled out (or specific reference made to where the employee may access the policy document or staff handbook). If this is not adhered to exactly then an employee may be able to bring a case of breach-of-contract.

There should always be reference to whom an appeal can be made against a disciplinary decision. Where this is not included a letter setting out the matter should be given to the employee and a signed copy kept by both parties.

DISCIPLINARY PROCEDURES – LINKS TO GRIEVANCE PROCEDURES

It is likely that most Councils will have both sets of procedures built into the contracts of their employees. Both should be carefully followed for the reasons given above.

However, if as the result of a disciplinary hearing an employee decides to bring a grievance about the conduct of any person handling the disciplinary matter, they are entitled to use the grievance procedure to do so.

DISCRIMINATION

It is essential to carefully observe the principles of the legislation that applies to matters of discrimination. This is a particularly sensitive area where there may be circumstances of disability, learning difficulties, or relating to a person who does not have English as a first language, or gender. Every effort must be made to ensure that all steps are taken to provide whatever assistance is need to the person concerned in the interest of natural justice. (See Grievance Procedure). Under the Disability Discrimination Act requirements implemented in 2004 relating to employing bodies all reasonable adjustments to the workplace must be made to permit an employee with a disability to perform the functions of a job. This extends to any place in which they may be required to attend a disciplinary/grievance/appeals hearing.

NATURAL JUSTICE

No disciplinary hearing or the decision of a disciplinary hearing will be found to be safe if the following main principles are not observed:

- The employee must be informed fully of the matter in writing that is considered to warrant a disciplinary hearing
- The matter must be investigated fully and thoroughly by an unbiased Investigator
- The employee must be given reasonable time to prepare a defence (5-7 days)
- The precise allegations should be read out at the start of the hearing
- The employee must be given adequate time to answer the allegations
- The employees representative/friend should be in possession of all the documentation that has been given to the employee
- The employee (or representative) should be allowed to challenge any matters that will be used by the employer to make their decision
- The panel hearing the matter must keep an open mind and not pre-judge the matter
- There must be the opportunity for the employee to appeal any decision to a non-involved third party
- Wherever possible the panel hearing the matter should have a gender and racial balance of members

It is worth remembering that the proof required in a disciplinary matter is not that of the Courts where the standard is: Beyond All Reasonable Doubt. The standard before a disciplinary hearing, or indeed an Employment Tribunal is: On The Balance Of Probabilities.

PENALTIES

The range of situations that bring people before a disciplinary hearing can be many. They can vary from the vexatious to the extremes of damage to the Council or other employees. Penalties should therefore be graded: ‘Let the Punishment Fit the Crime!
In general it is also a matter of natural justice and good management that will apply what is appropriate. Do not go over the top! This will at least sour relationships – perhaps not only of the employee before the hearing, but other who do not see ‘fair play' being used. At worst it is almost certain to bring you before an Employment Tribunal

SANCTIONS

So, grade sanctions to what is appropriate, and taking into account the employee track record.

The following is suggested as a guideline:

First problem & a minor one <> Verbal Warning given by Chairman
Second time & minor <> Further Verbal Warning from Chairman
More serious matter <> First Written Warning from Council
Second time & serious <> Final Written Warning from the Council
Gross misconduct <> Suspension on full pay & Hearing
It is not, of course, necessary to proceed through each level to the top, as it were. Depending on the severity of the matter the procedure can, after proper consideration, go to any higher stage immediately.

DISMISSAL

The statutory procedure will apply to:
- Conduct
- Capability
- Redundancy
- Expiry of a Fixed-Term Contract

EXEMPTIONS

1. Where the dismissal is in circumstances ie. Loss of a qualification to continue the job such as the loss of a licence;
2. Where the employer's business ceases abruptly.
3. Long-term illness

The government expects these occurrences to be rare.

GROSS MISCONDUCT

This will be a substantial matter and is usually clearly recognised as such ie. Theft, deliberate harm to or misuse of/to Council property, causing harm to a fellow employee, etc. In a case of this nature and after the usual proper preliminary investigation an employee should immediately be suspended on FULL PAY. They should not be sacked out of hand! To suspend without pay or dismiss summarily could rebound with a claim for unfair dismissal on the grounds that the matter was pre-judged and unfair. (Particularly if, on investigation, the employee is exonerated). Even if an employee is found guilty in a criminal court of an offence the matter (unless a prison sentence follows) is not one of automatic dismissal. The employer should convene a Disciplinary Hearing in the normal manner to consider the implications and facts in relation to the possibility of continuing employment.

APPEALS

A feature of natural justice and also inherent in the new requirements under the Dispute Resolution Regulations 2004 is that insofar as is possible the matter giving rise to discipline and grievance procedures should be manifestly seen to be fair. To ensure fairness a Council should form a separate Grievance and Discipline Hearing Panel and an Appeals Panel. Naturally the members of the Appeals Panel should not be contaminated by being part of any of the proceedings of the Grievance and Discipline

Panels. *Part 3 of Schedule 3 of the Act requires that in an Appeals Panel the employer should, as far as it is reasonably practical, be represented by a more senior manager than attended the first meeting.*

This may be difficult for a local council and makes the segregation of the members of the Appeals Panel from those of the Disciplinary and Grievance Panel more crucial to a manifestly fair and reasonable decision.
In some cases with very small local councils it might be wise to ask an independent member from a neighbouring local council to sit on the panel.

In addition; to ensure fairness, any serious matter should be investigated by an independent investigator competent in such work and whose report should be sent to both parties in the matter for consideration before further proceedings. This will be an option that an Employment Tribunal might well ask questions about, should a case reach them, where the internal processes of an organisation (possibly a number of local councils) do not have the knowledge and skills to conduct a procedure in a manner that will ensure that it is seen to act fairly and reasonably and comply with the law. Failure on either party to follow the law and spirit of the Act, the presentation of a facetious or vexatious case, or even a badly presented case can result in the imposition of fines on either party to a maximum of £5000 under the Act, or, as stated previously, seriously affect the amount of the award made for or against either party.

PAPERWORK

It is a requirement that all paperwork associated with the matter of a Disciplinary or Grievance hearing is kept under the Confidential Information classes of both the Data Protection Act 1998 and the Freedom of Information Act 2000.

First Written Warning. This should be kept on file for 6-months then destroyed and the employee advised of the fact.

Final Written Warning. This should be kept on file for 12-months then destroyed and the employee advised of the fact.

TIME LIMITS

An employee cannot submit an employment tribunal application unless they have sent their employer a Step-1 letter and waited 28-days for a response. This procedure applies to both current and former employees. Time limits may be extended to allow procedures to be completed. Where the employer fails to meet the statutory requirements an employment tribunal may increase or decrease the awards made as previously stated.

ABANDONMENT OF PROCEDURES UNDER THE ACT

It will be recognised as reasonable to discontinue proceedings where one party has made all reasonable attempts to comply but has been prevented from doing so.
The exemptions are specified:
• Unacceptable behaviour by one party through violence or abuse

The test will be that of a reasonable belief that harm would result to one party, their goods and property or another person through actual, or threat of, assault; or that one party has subjected the other party to harassment (See Society Advice Note on

Harassment). The definition that will be used is that one party creates a hostile, intimidatory, humiliating or degrading and offensive set of conditions.

NB .
Given changes in the reduction in emphasis given to stress in cases brought before the courts where stress is put forward as a major detriment then stress or anxiety engendered in one party will not usually be regarded as a sufficient cause to warrant exemption from the laid down procedure.

FAULT
If the statutory procedure is abandoned because of a reason outlined in the exception above, then the fault of either party will be taken into account by an Employment Tribunal. Where the case is that of dismissal and the employer is at fault, then the dismissal will automatically be considered unfair.

FINALLY

Be seen to follow procedures and act fairly and reasonably.

This policy was reviewed on 14th April 2025.

End of policy.