

FOUR MARKS PARISH COUNCIL

DISCIPLINE AND GRIEVANCES POLICY

PART 1 DISCIPLINARY, CAPABILITY AND POOR PERFORMANCE

This procedure is designed to help and encourage all employees to achieve and maintain acceptable standards of conduct and job performance. The aim is to ensure consistent and fair treatment for the individual. This procedure sets out the framework for resolving issues relating to misconduct and unsatisfactory performance in accordance with the Employment Rights Act 1996, Human Rights Act 1998, and the ACAS Code of Practice on Discipline and Grievance Procedures.

This procedure applies to all employees except where it conflicts with a contractual or statutory requirement, which takes precedence.

1. General Principles

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

No disciplinary action will be taken against an employee until the circumstances have been fully investigated.

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 at the appropriate stage.

The employee has the right to be represented at disciplinary hearings and appeals. In all instances of alleged misconduct, the employee will be given at least 5 working 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 Council of the offence, and any explanation presented by the employee.

Employees have the right to appeal against any disciplinary warnings and dismissal.

2. Roles and Responsibilities

Normally, the Parish Clerk or Chairman will consider minor disciplinary issues and resolve them, 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 Parish Clerk who will then be responsible for nominating an Investigating Officer. If the misconduct relates to the Parish Clerk, this should be referred to the Finance & General Purposes Committee.

The Investigating Officer who carries out an investigation should not participate in any subsequent decision to take action under the procedure. Likewise, the Hearing Officer 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, although this would normally be the case.

Only the Parish Clerk has the right to suspend an employee and provide verbal or written warnings for minor misconduct. If the misconduct relates to the Parish Clerk, the Chairman of the Finance & General Purposes Committee has those rights.

3. Representation

Employees have the right to representation, either by a trade union representative or a work colleague, at the hearing and appeal stages of the formal procedure.

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.

4. Informal Procedure Informal Advice and Guidance

Where a minor breach of acceptable/established standards of conduct occurs, which does not justify formal disciplinary action, the Parish Clerk will advise the employee concerned of the conduct and the 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 additional training – where appropriate – to achieve the necessary standards. Representation will not normally be appropriate. Managers should make a note of such informal advice and guidance and should set out in writing to the employee 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.

The formal procedure will apply when:

- Previous informal advice or warnings have proved ineffective;
- The allegation is of a serious nature; or
- A number of minor allegations are made which taken together constitute a more serious breach of discipline.

5. The Formal Procedure Suspension

In some circumstances, the Parish Clerk may consider suspension on contractual pay, pending further investigation or until the disciplinary hearing takes place. Suspension may be appropriate where:

- Cases potentially involve gross misconduct;
- Relationships have broken down; or
- The presence of the employee may hinder the investigation process
- There is a risk to the employer's property or to other people.

In all cases alternatives to suspension, such as working from home, will be considered.

An employee should be advised that suspension in itself is a neutral act and does not constitute disciplinary action.

An employee should be advised of the reasons for suspension. The period of suspension should not normally last for more than 20 working days. However, this period can be extended where necessary.

The decision regarding whether or not suspension is continued can be reviewed at any time during the disciplinary process.

6. Investigation

Before any decision can be made about whether or not a disciplinary hearing is necessary, an investigation must take place. The Parish Clerk (or the Finance & General Purposes Committee, in relation to matters concerning the Parish Clerk) will 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 will normally be held with the employee concerned. The purpose of the interview is to gather the employee's initial response to the allegations and to identify whether any further investigation is needed.

For the benefit of the employee and the 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 Commissioning Officer who has appointed the investigator 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 provided to the Parish Clerk (or Finance & General Purposes Committee) recommending one of the following:

- Take no further action and inform the employee accordingly;
- Advise the arrangement of counselling, training, extra supervision, or written advice (as appropriate); or
- Arrange a disciplinary hearing.

7. Arranging a Hearing

If, following the recommendations of the Investigating Officer, the Parish Clerk concludes that a hearing is required then the necessary arrangements should be made by the Parish Clerk. The employee will be given at least 5 working 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.

The Investigating Officer is responsible for presenting the case and making arrangements for any witnesses that he or she relies 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 Hearing Officer at least 3 working days prior to the hearing and these will be provided to the Investigating Officer.

8. Conducting a hearing

The Panel for a hearing will normally comprise of the Parish Clerk (or three members of the Finance & General Purposes Committee, in relation to matters concerning the Parish Clerk) and an independent 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; and
- If the allegation is substantiated, to 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:

- Introduction of the Panel members and outline of their roles;
- Statement of the purpose of the hearing and the allegation;
- Presentation of the case by the Investigating Officer with witnesses called as necessary;
- Questions by employee or their representative;
- Questions by the Panel and adviser;
- Presentation of the case by the employee or their representative with witnesses called as necessary;
- Questions from Investigating Officer;
- Questions from Panel and adviser;
- Concluding statement by Investigating Officer;
- Concluding statement by employee or their representative;
- Adjournment of the Panel to make their decision;

- The Panel reconvenes and the employee/representative is informed of the decision and, if necessary, their right of appeal. If the decision is not to be given on the day, this will be provided to the employee within 5 working days of the hearing.

Requests for an adjournment can be made at any stage and it is up to the Chair to decide whether or not a request should be granted.

The decision of the Panel will be confirmed to the employee in writing within 5 working days. The letter should clearly set out:

- The Panel's decision;
- The length of time that any warning will be active for; (as appropriate)
- The expected improvement in conduct; (as appropriate)
- Any assistance that will be provided to achieve this; (as appropriate) and
- The employee's right to appeal.

9. Formal Disciplinary sanctions

In determining the appropriate disciplinary sanction, regard should be given to the employee's previous record, the gravity of the offence, and any explanation given.

If the allegations are substantiated at the disciplinary hearing, the Hearing officer may either apply no sanction or any one of the following sanctions, including dismissal:

first written warning – usually valid for 6 months and given for a first offence for example or where a previous warning to the employee has not resulted in the required improvement to their conduct;

final written warning – usually valid for 12 months and for more serious offence that is insufficiently serious to justify dismissal, or where previous sanctions have been ineffective;

dismissal (with notice) for an act or act of misconduct, other than gross misconduct, for example for a further offence where an employee is under a final written warning;

dismissal (without notice) in cases of gross misconduct and where the employee is summarily dismissed i.e. without notice or pay in lieu of notice transfer, demotion or loss of increments;

other sanctions which are appropriate in the circumstance;

any reasonable combination of these sanctions.

The Hearing Officer has discretion to apply the level of warning warranted by the seriousness of the case which may not necessarily be applied in sequence.

Records of informal meetings and formal warnings will be kept on employee's personal files.

10. 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 adviser, if appropriate.

An employee who wishes to appeal must do so in writing to the Parish Clerk (or Chair of the Financial & General Purposes Committee, in relation to matters concerning the Parish Clerk). This must be done within 10 working 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; and
- A failure to adhere to the disciplinary procedure.

11. Arranging an Appeal

The date and time of the appeal will be organised by the Parish Clerk (or Chair of the Finance & General Purposes Committee, in relation to matters concerning the Parish Clerk). 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 working days prior to the hearing.

12. Conducting an Appeal Hearing

The objective 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:

- Presentation of the appellant's case, including calling any witnesses;
- Questions by the [Manager] to the appellant and their witnesses;
- Presentation of the case by the [Manager] (the Chair of the previous hearing) who took the disciplinary action, including calling any witnesses;
- Questions by the appellant to the [Manager] and their witnesses;
- Questions by the Appeals Panel and adviser to both parties and their witnesses;
- Concluding statements by the parties. No new information should be introduced at this stage and the appellant should have the opportunity to sum up last;
- Adjournment of the Panel to make their decision;
- The appeal is reconvened and both parties are informed of the decision or in writing within 5 working days of the appeal hearing;

The Appeals Panel has the right to call its own witnesses should it consider this to be of assistance in making its decision.

13. 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.

14. Disciplinary Rules

It is difficult to define all the acts of misconduct that might lead to disciplinary action. As a general principle, a test of reasonableness would be applied, i.e. would a reasonable person be aware that disciplinary action would result from a certain act or omission?

The following are examples of the types of conduct that are unacceptable and might lead to disciplinary action. The list is not exhaustive and other behaviour not listed may lead to disciplinary action.

- Poor time-keeping/ attendance;
- Unjustifiable absence from work;
- Waste, loss or damage of Council property through failure to take due care;
- Negligence or failure in performance of duty;
- Inappropriate or unauthorised use of e-mail, IT, or telephone facilities; or
- Being under the influence of alcohol or drugs.

15. 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 Council and employee, and the trust which is inherent in that, is irrevocably broken.

The list below gives examples of matters likely to be regarded as gross misconduct and is not exhaustive:

- Refusing to follow reasonable management instructions;
- Theft from the 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 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 on the Council's IT facilities.

16. Training

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

17. Capability Procedure

This procedure is used to support, enhance, and improve the performance of employees. This procedure sets out a framework for resolving issues relating to poor performance, in accordance with the Employment Rights Act 1996, Human Rights Act 1998, and the ACAS Code of Practice on Disciplinary and Grievance Procedures. The procedure aims to ensure that consistent and fair treatment is given to all individuals.

18. Scope

Where there are issues of misconduct or of negligence, these will be dealt with under the Disciplinary Procedure. For matters of sickness, disability, or long term ill health, the Absence Management Policy will be used.

19. General Principles

The Procedure is not a substitute for good management practices. It should only be invoked when initial attempts to improve performance have been unsuccessful following discussions between the employee and their manager.

The employee must be given at least 5 working days' notice of the requirement to attend a formal review meeting or an appeal.

The employee has the right to be represented at formal review meetings or appeals. In the event of a formal warning or a dismissal, the employee has the right of appeal.

20. Related Procedures

When using the procedure, it may be necessary to refer to the contents of other agreed documents such as:

- The Equal Opportunities Policy
- The Grievance Procedure
- The Absence Management Policy

21. 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 or a work colleague.

Representatives can take an active part in review meetings.

22. Action against a Trade Union Official

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.

23. The Informal Procedure

The Parish Clerk (or Chair of the Finance & General Purposes Committee) in relation to matters concerning the Parish Clerk) should deal with minor issues of poor performance in the first instance.

A meeting with the employee to discuss poor performance should be arranged and any problems or areas for concern should be raised by the Parish Clerk. Appropriate support and training should be offered to assist the individual towards meeting the required standards in the future. Realistic targets should be agreed with the individual and future expectations

made clear by the Parish Clerk. The Parish Clerk will record the points discussed in the meeting and confirm this in writing to the employee along with the agreed plan to achieve acceptable levels of performance including support and learning and development to be made available. A review meeting should be arranged within 2 months to assess whether the targets have been met and whether the performance is satisfactory.

In most cases, these meetings should provide sufficient guidance, support, and clarification of standards to rectify the situation.

However, the formal procedure will apply when:

- Previous informal advice or guidance has proved ineffective; or
- The performance is so poor that informal discussions are unlikely to help.

The Formal Review

If informal discussions have proved unsuccessful in raising performance levels to the standards set by the Parish Clerk then the formal procedure will be invoked. There are three stages to the formal procedure. The employee has the right of representation at each stage.

During each stage, the employee's performance will be monitored closely. The method of doing this will be made clear to them at the conclusion of each review meeting.

Stage 1: The Capability Review

The Capability Review should build on the informal discussions already held as appropriate. It should be sufficiently specific so that the employee knows exactly what it is about their performance that is unsatisfactory and how they can improve to the required standard. The Parish Clerk (or the Finance & General Purposes Committee, in relation to matters concerning the Parish Clerk) will carry out the Review.

The review has four main purposes:

1. To allow the Parish Clerk to discuss with the employee: (i) the standards of work required; (ii) what improvement is necessary; (iii) how the employee can be helped to achieve them; and (iv) how improvement will be assessed and the timescale which must be reasonable.
2. To allow the employee to: (i) obtain a clear understanding of what is expected of them; (ii) give an explanation or comment on their work; and (iii) give their views on how the problem can best be tackled.
3. To allow the Parish Clerk and the employee to explore other options, such as: additional instruction, training, or personal development activity; or referral to occupational health, which may involve alternative action under the Council's Absence Management Policy. Please refer to the Absence Management Policy.
4. To make clear to the employee: (i) the timescale for improvement; (ii) how and by whom their work will be monitored during the review period; and (iii) the consequences if their work does not improve or if improvement is not maintained.

Ideally, standards of performance should be agreed between the Parish Clerk and employee. However, in the absence of such an agreement, the Parish Clerk must satisfy himself or herself that any targets set are reasonable and non-discriminatory. If training or other learning and development support has already been given, then its effectiveness should be reviewed, and any further training and support agreed.

If the Parish Clerk is satisfied at the conclusion of the review that there is a shortfall in performance, the employee will be issued with a formal warning and an action plan, including timescales, to achieve. It will also be made clear that failure to achieve the action plan will lead to the next stage of the formal procedure. The length of time given to improve will depend on the nature of the job and the performance gap but in normal circumstances it should not be more than 3 months. The Parish Clerk should confirm the outcome of the meeting in writing to the individual within 5 working days.

Stage 2 – The Capability Review

If the employee fails to achieve the standards or the timescales set out in the action plan, then Stage 2 of the procedure is invoked. This involves a further review based on the same structure as Stage 1.

Stage 2 of the Capability Review will be conducted by the Parish Clerk (or Chair of the Finance & General Purposes Committee, in relation to matters concerning the Parish Clerk). If it is concluded that there is still a performance issue to be addressed, a further formal warning should be issued along with an action plan giving details of the standards of performance required and the timescales within which these must be achieved. The employee should be reminded that if the action plan is not achieved, then Stage 3 will be invoked. It needs to be made clear that Stage 3 may result in a decision to dismiss the employee. Again, the length of time given to improve will depend on the nature of the job and the performance gap but in normal circumstances should not be more than 3 months. A letter to confirm the outcome of the meeting should be sent to the employee within 5 working days, it should also explain the employee's right to appeal against any warning issued.

Stage 3 – The Final Capability Review

The Final Capability Review will be heard by three members of the Finance & General Purposes Committee.

The Parish Clerk who conducted Stages 1 and 2 should also be present to provide details of the previous review meetings and of the steps taken to encourage improvement in the employee's performance.

The employee will have the opportunity to respond and put forward any points they wish to be considered.

Consideration should be given to any alternatives to dismissal, such as redeployment or options of downgrading. However, this may not always be possible and will depend on each individual situation and the circumstances of the organisation.

The Panel must satisfy themselves that they have heard all of the relevant information and that the employee has been given sufficient opportunity and support to improve. If they consider that the employee's performance remains unsatisfactory, they must inform the employee that their employment is terminated on the grounds of capability or any alternatives to dismissal.

The employee's dismissal will be with notice or, if serving their notice period is not in the interests of the Council, they will receive pay in lieu of notice. The dismissal must be confirmed in writing within 5 working days, stating the reasons for it, and informing the employee of their right of appeal.

24. Levels of Authority

Guidance is given here on the appropriate levels of authority, although alternative arrangements may have to be made on occasion.

Formal	Officer	Authority
Stage 1 & 2	Parish Clerk	Formal warnings
Stage 3	Finance & General Purposes Committee	Dismissal

PART TWO

GRIEVANCES

1. Introduction

Four Marks Parish Council recognises that from time to time individual employees may have a grievance relating to their employment.

The Council's policy is to ensure that employees who feel aggrieved about the way they have been treated, either by their colleagues or by management, are given every opportunity to express their views and have the issue they have raised resolved in a fair, timely and just manner.

Solutions to some issues will involve compromise and for that reason it may not be possible to resolve every issue to the total satisfaction of those concerned. Employees cannot raise a grievance in regard to disciplinary action being taken, refer to the section on disciplinary.

2. General Principles

An employee has the right, at any formal stage of this grievance procedure, to be accompanied by a work colleague or union representative of his or her choice.

The normal starting point for anyone with a grievance will be at an informal level as detailed below. However, if a grievance is raised against management the individual may take their grievance to a more senior manager nominated in the next stage of the process.

Time limits are provided to ensure prompt decisions. However, time limits may be modified by mutual agreement. Where an employee fails to comply with a time limit, without good reason or explanation, the procedure will cease and the grievance will be considered settled or withdrawn. If a grievance is not dealt with by the appropriate manager within the specified time limit, unless it is agreed that it was not reasonably practicable to do so, the employee shall have the right to proceed to the next stage of the procedure.

All cases dealt with under this procedure, whether formal or informal, will be conducted in strictest confidence and only those parties who are involved in the procedure will have knowledge of the process applied.

Records will be kept detailing the nature of the grievance raised, the employer's response, any action taken and the reasons for it. Records will be kept confidential and retained in accordance with the Data Protection Act 1998, which requires the release of certain data to individuals on their request. Copies of any meeting records will be made available to the individuals concerned although in certain circumstances some information may be withheld or redacted, for example to protect a witness.

In any case concerning the Parish Clerk, the matter must be referred to the Finance & General Purposes Committee. Consequently, the Chairman of the Council is responsible for overseeing that the procedure is carried out appropriately.

3. Procedures

Stage 1 - Informal Discussion

An employee who has a grievance, should raise the matter with their Line Manager immediately either verbally or in writing. The manager will investigate and will seek to resolve the matter within 5 working days, unless an extended period of time is agreed upon by both parties. It is expected that the majority of concerns will be resolved at this stage, however, if the matter is not resolved to the satisfaction of the individual then a formal written grievance should be submitted to the Parish Clerk.

Stage 2 – Formal Discussion

The written grievance must be submitted to the Parish Clerk within 10 working days of the original response to the employee's grievance. The Parish Clerk will investigate the matter fully and meet with appropriate individuals. A written response to the grievance will be provided within 10 working days.

If the employee who raised the grievance does not consider that this written response constitutes a satisfactory resolution to their grievance, they may appeal to the Chairman of the Council within 10 working days.

Stage 3 - Appeal

The appeal must be made in writing to the Chairman of the Council who will convene a Grievance Panel to review the case in consultation with, if appropriate and practicable, the employee, other relevant employees and managers.

The Chairman will respond in writing within 20 working days of the panel meeting. This decision is final and there is no further right of appeal. However, where all parties agree that there would be some merit in referring the matter to a third party for advice, conciliation or arbitration, arrangements will then be made to find a mutually acceptable third party.

4. Conduct of Grievance Meetings

This procedure will be followed at all times:

- The Chair for the meeting will detail the status of the hearing and explain the procedure to be followed.
- The grievance will be fully discussed, and if appropriate additional employees may be called forward to present supporting accounts.
- All parties will be given the opportunity to present their case, question the statements made and the witnesses.
- Both sides shall have the opportunity to sum up their position.
- One or both parties may be recalled after the meeting has closed if clarification on any point is required.
- The Chair of the meeting will consider whether the grievance is valid or invalid. If valid the Chair of the meeting will take the necessary action to resolve the grievance. This may include disciplinary action and in cases of harassment or bullying could result in dismissal.
- The Chair of the meeting will make their decision and notify the parties concerned, in writing, of the decision and the reasons for it within 10 working days.
- If the procedure is in Stages 1 or 2 the individual who raised the grievance will be informed of the right to Appeal against the decision.
- Notes will be taken at formal meetings held under all stages of this procedure. A report of the full case will be made which will be kept on the member of staff's personnel file. All parties to the grievance may request a copy of the report. Requests to amend or make additions to the report will be noted.

5. Disputes

A dispute is a collective grievance raised by more than one member of staff. It is in the interest of both the Council and its employees that disputes should be resolved fairly and quickly. If the dispute cannot initially be resolved in an informal manner, the same process as mentioned above will be followed, however consideration should be given as to whether the problem might be better raised and handled by a union on behalf of all the employees.