

FILEY TOWN COUNCIL

STAFFING COMMITTEE HELD ON 27 OCTOBER 2009 AT 2.00PM

Present : Cllr Aileen Newbury (in the Chair), Cllr D Murton, Cllr Julie Viles
Cllr R Walker and Cllr Marion Wright, Mrs G Robinson, Town Clerk

NOTICE OF MEETING

RESOLVED: That Public Notice of the meeting had been given in accordance with Schedule 12, para 10(2) of the Local Government Act 1972. 721/09

APOLOGIES

Cllr C Hodgson had sent apologies to the meeting due to a work commitment. It was
RESOLVED: That Cllr C Hodgson's apologies be accepted. 722/09

DECLARATIONS OF INTEREST

RESOLVED: That it be noted no declarations of interest were received. 723/09

EXCLUSION OF PRESS AND PUBLIC

RESOLVED: That under the Public Bodies (Admission to Meetings) Act 1960, members of the press and public are excluded for the following items of business in view of the confidential nature of engagement and terms of service of employees. 724/09

STAFFING MATTERS

Disciplinary and Grievance Policies

Members had previously been circulated with the Town Council's existing Disciplinary and Grievance Policies together with updated model procedures which the Clerk had received from the Society of Local Council Clerks (copies herewith). The Clerk advised Members that the Society of Local Council Clerks procedures met current legal requirements as set out in the Employment Act 2008 and the ACAS Code of Practice April 2009. It was

RESOLVED: That a recommendation be made to full council to adopt the Society of Local Council Clerks Model Disciplinary Procedure until such time as the Town Council revise its own Disciplinary Policy. 725/09

RESOLVED: That a recommendation be made to full council to adopt the Society of Local Council Clerks Model Grievance Procedure until such time as the Town Council revise its own Grievance Policy. 726/09

Staffing Committee Disciplinary and Grievance Hearing Panel

The Model Disciplinary and Grievance Procedures advised that it was good practice for Councils to establish a Disciplinary and Grievance Hearing Panel so that if a dispute arose in the workplace the elected members are already appointed. The Clerk advised that training on the duties of being a panel member could be delivered by Scarborough Borough Council's Human Resources Department for all Members of the Staffing Committee, as in situations where individual members are implicated in a dispute or have undertaken an investigatory role they may need to be substituted as panel members. Nominations were sought for three members being elected from the Staffing Committee which would serve until the Annual Council Meeting in May 2010, after which a Disciplinary and Grievance Hearing Panel would be elected on an annual basis at the Annual Council Meeting. It was

RESOLVED: That a recommendation be made to full council that Cllr David Murton, Cllr Julie Viles, Cllr Richard Walker be elected to serve on a Disciplinary and Grievance Hearing Panel with Cllr Marion Wright acting as a substitute Hearing Panel Member until the next Annual Council Meeting in May 2010 and the Disciplinary and Grievance Hearing Panel be given delegated power to make a decision on Disciplinary and Grievance matters on behalf of the Town Council, reporting the Panel's decision to the Staffing Committee for information. 727/09

Continued overleaf

Staffing Committee held on 27 October 2009 at 2.00pm continued

STAFFING MATTERS continued

Independent Appeal Hearing Panel

The Model Disciplinary and Grievance Procedures advised that it was good practice for Councils to establish an independent Appeal Hearing Panel to which an employee has a right to appeal against a disciplinary decision. This should be a separate panel of elected members who have not been involved in an original disciplinary hearing and who will view evidence with impartiality. The Clerk advised that training on the duties of being an Appeal Panel Member could be delivered by Scarborough Borough Council's Human Resources Department, as in situations where individual members are implicated in a dispute or have undertaken an investigatory role they may need to be substituted as panel members. It was

RESOLVED: That a recommendation be made to full Council to elect three members of mixed gender, (independent from members of the Staffing Committee) plus a substitute member, to serve on an Appeal Hearing Panel until the next Annual Council Meeting in May 2010 and the Appeal Hearing Panel to be given delegated power to make a final decision on behalf of the Town Council, reporting the Panel's final decision to the Staffing Committee for information.

728/09

Staffing Matter

The Clerk made Members aware of a staffing matter which she needed to take advice on and is working with Scarborough Borough Council's Human Resources Department to progress matters. The Clerk informed Members that it would be inappropriate to discuss any detail of the staffing matter at this stage. It was

RESOLVED: That a recommendation be made to full Council that the above information be noted and the Town Clerk be given delegated power to progress the staffing matter further with Scarborough Borough Council's Human Resources Department.

729/09

Cllr Mrs A Newbury
Chairman
Staffing Committee

FILEY TOWN COUNCIL

DISCIPLINARY POLICY

The Council recognises that good management can prevent the development of potential disciplinary problems. However, when these do arise, it is the Council's aim to deal with the matter fairly, speedily and consistently and in accordance with the agreed procedure.

DISCIPLINARY PROCEDURE

It should be noted that in the event of disciplinary action against the Clerk of the Council the words "Clerk of the Council" should be replaced by "Chairman of the Council" in the following procedures.

Any complaint or allegation regarding the conduct of an employee should, in the first instance, first be referred to the Clerk of the Council who would normally deal with a first and relatively minor infringement informally.

An informal discussion will point out any shortcomings and encourage improvement.

However where the facts of the case appear to call for disciplinary action the Clerk of the Council will decide whether the misdemeanour amounts to misconduct or gross misconduct.

The appropriate procedure will then be followed.

1. Misconduct – Oral warning

- 1.1. If the outcome of the informal discussion is that an improvement is required, the employee will be advised that they are being given an oral warning. It is important that the member of staff knows how conduct will be reviewed and over what period, also of the consequences if there is no improvement or if further misconduct occurs.
- 1.2. A note giving details of the oral warning will be kept on file and a copy given to the employee who should confirm its receipt in writing.
- 1.3. If no further disciplinary action is required within 6 months of issuing the oral warning the note should be removed from file.
- 1.4. The employee should be advised in writing of their right of appeal to the Council's Staff Appeals Committee.

2. Misconduct – Formal written warning

- 2.1. If the outcome of an informal discussion is that a serious offence has occurred, or there has been no improvement following an oral warning, the employee will receive a formal written warning from the Clerk of the Council.
- 2.2. The written warning will set out the nature of the offence, the improvement required, giving a timescale where applicable and the consequences of no improvement or further misconduct.
- 2.3. A note giving details of the formal written warning will be kept on file and a copy given to the employee who should confirm its receipt in writing.
- 2.4. If no further misconduct relative to the same warning occurs and the improvement required is sustained then the note will be removed from the employee's file at the end of 9 months.

2. Misconduct – Formal written warning (continued)

- 2.5. The employee should be advised in writing of their right of appeal to the Council's Staff Appeals Committee at this stage.

3. Misconduct – Final written warning

- 3.1. If there has been no improvement following a written warning, or the misconduct is sufficiently serious to warrant only one written warning the employee will receive a final written warning from the Clerk of the Council.
- 3.2. This warning will detail the misconduct, warn the employee that dismissal will result if there is no satisfactory improvement, giving a time scale if necessary, and notify them of the right of appeal to the Council's Staff Appeals Committee.
- 3.3. If no further misconduct relative to the same warning occurs and the improvement required is sustained then the note will be removed from the employee's file at the end of 12 months.
- 3.4. The Clerk of the Council will notify the Chairman of the Council of any final written warnings given.
- 3.5. In the event that such disciplinary action is taken against the Clerk of the Council, the Chairman of the Council will notify the Council of any procedures in hand and of any final written warning given.

4. Misconduct – Dismissal

- 4.1. If there is no improvement following a final written warning, the Clerk of the Council will notify the Chairman of the Council who will instruct the Clerk of the Council to convene a meeting of the Staff Grievance and Disciplinary Committee within 7 working days wherever possible subject also to the availability of the employee's representative.
- 4.2. Any employee of the Council attending such a hearing may be accompanied by a representative of the trade union to which they belong (who may or may not be a work colleague), or by a work colleague, friend or adviser not acting in a legal capacity. The employee should advise the Council who their representative is to be. Whilst the representative can speak at the meeting and ask questions, he or she cannot answer question for the employee.
- 4.3. Following the recognised agenda for such hearings the Committee will hear the cases of both the Clerk of the Council (or Chairman of the Council) and the employee.
- 4.4. The Committee will decide "in camera" whether dismissal is justified and will communicate the decision to the parties concerned verbally after the close of the meeting if the parties so wish.
- 4.5. In the event that the Committee is unable to make the decision e.g. because of the Committee's need to seek further advice or information, the reason for not reaching a decision will be conveyed in writing to the parties concerned.
- 4.6. In any event the decision will be conveyed in writing within 5 working days.
- 4.7. If the employee wishes to appeal against the decision of the Staff Disciplinary Committee, they must do so in writing to the Chairman of the Council within 21 working days of receipt of the decision notice.

4.8. On receipt of such notice of appeal, the Chairman of the Council will instruct the Clerk of the Council to convene a meeting of the Staff Appeals Committee within 10 working days. The Committee will hear the case according to their procedures and will communicate their decision in writing to the parties concerned.

4.9. The decision of the Staff Appeals Committee is final.

5. Gross Misconduct

5.1. Where the Clerk of the Council decides that the misdemeanour amounts to gross misconduct, the Chairman of the Council will immediately be informed and, in consultation with the Chairman of the Council, the Clerk of the Council shall decide whether the employee will be suspended on full pay while the matter is investigated.

5.2. The Clerk of the Council will convene a meeting of the Staff Grievance and Disciplinary Committee within 7 working days wherever possible, subject also to the availability of the employee's representative, who will hear the case as detailed in Section 4 above.

5.3. The employee may appeal to the Staff Appeals Committee whose decision will be final.

NOTES

The following are examples of offences which would be regarded as gross misconduct (this is not an exhaustive list).

Theft; fraud; being unable to perform duties satisfactorily due to the influence of drink or illegal drugs whilst at work or on Council premises; disclosure of confidential information; deliberate damage to Council property or that of other employees or members of the public; disorderly, indecent or violent behaviour during employment or whilst on Council premises; acts of incitement or actual acts of harassment or discrimination on the grounds of sex, race, religion or age; negligence which could endanger employees and members of the public; any breaches of computer security.

PURPOSE AND SCOPE

This procedure is designed to help and encourage all council employees to achieve and maintain high standards of conduct whilst at work or representing the council. The aim is to ensure consistent and fair treatment for all. This procedure is prepared in accordance with the dismissal and dispute resolution procedures as set out in the Employment Act 2008 and the ACAS Code of Practice APR 2009

PRINCIPLES

- a) No disciplinary action will be taken against an employee until the case has been fully investigated
- b) 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.
- c) At all formal stages the employee will have the right to be accompanied by a trade union representative or work colleague during the disciplinary interview.
- d) No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty of dismissal without notice or payment in lieu of notice may be applied.
- e) An employee will have the right to appeal against any disciplinary penalty imposed.
- f) The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

THE PROCEDURE FOR MISCONDUCT and GROSS MISCONDUCT

3.1.1 The following list provides examples of **misconduct** which will normally give rise to formal disciplinary action:

- Unauthorised absence from work
- Persistent short-term and/or frequent absences from work without a medical reason
- Lateness for work or poor time keeping
- Inappropriate standard of dress
- Minor breaches of Health and Safety or other Society rules or procedures
- Failure to perform your job to the standard expected or in line with your job description/objectives
- Time wasting
- Disruptive behaviour
- Misuse of the council's facilities (e.g. telephones, computers, email or the internet)
- Refusal to carry out reasonable requests or instructions
- Smoking in unauthorised areas
- Failure to follow an agreed council Procedure

This list is not exhaustive and offences of a similar nature will result in disciplinary action being instigated N.B. persistent or frequent absence on medical grounds and long term sickness absence will be dealt with using a procedure for Incapacity, which is described in the Absence Policy.

3.1.2 The following list provides examples of offences which are normally regarded as **gross misconduct**:

- Theft, fraud, deliberate falsification of records, or other acts of dishonesty
- Fighting, assault on another person
- Deliberate damage to property of the council, its workers or members
- Gross incompetence in the conduct of work
- Gross negligence which results in the council or employees being put at risk.
- Being under the influence of illegal drugs or excessive alcohol

- Acts of incitement towards or actual acts of discrimination, harassment or victimisation including on the grounds of sex, race, colour, ethnic origin, disability, sexual orientation, age, religion or belief
- Serious acts of insubordination
- Serious breach of duty to keep information of the council, its service providers and its clients confidential
- Unauthorised entry to computer records
- Serious breach of the council's Security Policy, Health & Safety Policy, Confidentiality or e-mail and Internet Policy
- Any action, whether committed on or off the premises, that is likely to or does bring the council into disrepute
- Serious negligence which causes or might causes significant loss, damage or injury
- Accepting bribes or incentive payments from suppliers
- Unauthorised use of Society funds or credit
- Working with an external agency to provide information which would be detrimental to and cause commercial risk to the council.

This list is not exhaustive and other offences of a similar gravity will result in disciplinary action being instigated at Gross Misconduct level which carries a potential penalty of dismissal. Gross Misconduct is generally any conduct which places extreme pressure on the mutual trust which exists in an employment relationship.

3.2 INFORMAL ACTION

Minor misconduct will be dealt with informally usually in a confidential one-to-one meeting between the employee and line manager. In the case of the Clerk being the individual against whom there is a complaint or allegation the matter should be handled discreetly by members of the Staffing (or similar) committee and involve an informal meeting initially. However, where the matter is more serious or informal action has not brought about the necessary improvement the following procedure will be used:

3.3 FORMAL ACTION

3.3.1 The level of warning you may receive for misconduct/gross misconduct will depend on how serious the council considers the alleged actions to be and your previous conduct in all the circumstances. In the event of alleged gross misconduct the formal process may commence at Stage 4 –see 3.4 below.

3.3.2 Disciplinary Letters

If there is a concern about an employee's conduct or behaviour then a letter will be given to the employee advising him/her of the allegation(s) and reasons why this is unacceptable. The letter should invite the employee to attend a meeting at which the alleged misconduct will be discussed and will inform the employee of their right to be accompanied to the meeting. The letter will specify at which stage the disciplinary procedure is being invoked (see 4 stages below) and if invoked at Stage 4 for Gross Misconduct the letter will warn that a potential outcome could be dismissal. The time, date and venue of the meeting will also be advised. Any documents to be produced at the meeting will also be provided.

3.3.3 Disciplinary Meetings

The time and location of a disciplinary meeting should be agreed with the employee and it should be held in a private location with no interruptions. This will normally be without undue delay but allowing the employee to prepare their case e.g. within 5 days of the letter being sent, where practically possible. At the meeting the manager (or in the case of the Clerk being disciplined, the Chair of the hearing panel) will state the complaint against the employee and go through the evidence which has been gathered. The employee will also be allowed to ask questions, present evidence and call witnesses if advance notice has been given that they will do so.

If the employee is unable to attend the meeting due to unforeseeable reasons out of their control (e.g. illness) then the council will reasonably rearrange the meeting. However, if the employee fails to attend the meeting without good reason the meeting can be held in the employee's absence.

3.4 OUTCOMES AND PENALTIES

Stage 1 - Oral Warning

In the instance of a first complaint that conduct does not meet acceptable standards, the employee will normally be given a formal ORAL WARNING. He or she will be advised of;

- the reason for the warning,
- that it is the first stage of the disciplinary procedure,
- the improvement that is required and the timescales for achieving this improvement,
- together with a review date and any support available (where applicable) and
- his or her right of appeal.

A brief note of the oral warning will be kept but it will be spent after 6 months, subject to satisfactory conduct.

Stage 2 - Written Warning

If the offence is a serious one, or if further to previous formal disciplinary action, a WRITTEN WARNING will be given to the employee by the Line Manager. This will give details of the complaint, the improvement required and the timescale. It will warn that action under Stage 3 will be considered if there is no satisfactory improvement and will advise of the right of appeal. A copy of this written warning will be kept on file but it will be disregarded for disciplinary purposes after 12 months subject to satisfactory conduct..

Stage 3 – Final Written Warning

If there is still a failure to improve and conduct or performance is still unsatisfactory, or the misconduct is sufficiently serious, a FINAL WRITTEN WARNING will normally be given to the employee. This will give details of the complaint, will warn that dismissal will result if there is no satisfactory improvement and will advise of the right of appeal. A copy of this final written warning will be kept by the Line Manager (or in the case of the Clerk being disciplined by the Chair of the Hearing Panel) but it will be spent after 12 months (in exceptional cases the period may be longer) subject to satisfactory conduct.

Stage 4 – Dismissal or other sanctions

If conduct is still unsatisfactory and the employee still fails to reach the prescribed standards, or where the Society reasonably believes Gross Misconduct has occurred, DISMISSAL may result. Only the appropriately convened hearing panel can take the decision to dismiss an employee. The employee will be given a written statement of allegations against him/her, invited to a meeting and then be notified in writing of the reasons for the decision taken at the hearing. Penalties at this stage may include dismissal with notice or summary dismissal (i.e. without any notice), Final Written Warning with/without demotion, loss of pay or loss of seniority. If dismissal is the outcome, the employee will be advised of the date on which employment will terminate. In all cases the employee has a right of appeal.

Very exceptionally, if an offence of Gross Misconduct is extremely serious an employee can be dismissed immediately without a meeting. In this situation a letter setting out reasons for dismissal would be sent to the employee offering the opportunity for an appeal hearing.

3.5 SUSPENSION

If you are accused of an act of gross misconduct, you may be suspended from work on full pay while the council investigates the alleged offence. Only the appropriately convened committee has the power to suspend. This enables a swift and thorough investigation to occur. Whilst suspended pending disciplinary investigation regular contact with a nominated person at the council will be maintained although access to premises, equipment or systems may be denied. The Investigator who compiles evidence for the disciplinary hearing must play no part in the subsequent decision-making to ensure impartiality. Councils need to consider the implications of such arrangements on its hearing and appeal panel plans early on in the disciplinary process.

3.6 APPEALS

The Appeals stage of the disciplinary process is part of the Code of Practice to which an employee has a right. It can be exercised after any of the stages of disciplinary action for Misconduct/Poor Performance or Gross Misconduct.

An employee who wishes to appeal against a disciplinary decision should inform the Chair/Mayor (or Chair of the relevant committee) within five working days, in writing and giving reasons for the appeal. An Appeal may be raised if:

- The employee thinks the finding or penalty is unfair
- New evidence has come to light
- The employee thinks that the procedure was not applied properly

Where possible the Appeal will be heard by a separate panel of elected members who have not been involved in the original disciplinary hearing, who will view the evidence with impartiality. The employee will have the right to be accompanied by a colleague or accredited Trade Union official or lay member at the appeal hearing. The outcome of the appeal and reasons for it will be advised to the employee as soon as possible after the meeting and be confirmed in writing.

At the Appeal hearing any disciplinary penalty imposed will be reviewed but it cannot be increased. The decision taken at the Appeal hearing will be final.

3.7 THE RIGHT TO BE ACCOMPANIED

At each formal stage of disciplinary interview an employee has the right to be accompanied and can make a reasonable request for such a person to accompany them. An employee can ask any other employee or a trade union representative or an appropriately accredited official employed by a trade union to accompany them, to give support and help them prepare for the disciplinary interview. This right is enshrined in the 1999 Employment Relations Act. As this is an internal process there is no provision to have any external person accompany or represent an employee e.g. partner, parent, solicitor etc. the companion can address the hearing, put and sum up the employee's case, respond on behalf of the worker to any views expressed at the meeting, confer with the employee. The companion cannot however answer questions on the employee's behalf or address the hearing if the employee does not wish him/her to or prevent the employee explaining their case.

3.8 HEARING PANELS

The SLCC advise that councils establish hearing panels to hear disciplinary and grievance hearings on an annual basis so that if a dispute does arise in the workplace the elected members involved are already trained and briefed on their duties as a hearing or appeal panel member. In situations where individual members are implicated in the dispute or have undertaken an investigatory role then they will need to be substituted as panel members.

3.9 NOTE-TAKING

It is highly recommended that a note-taker be provided to every meeting/hearing which arises as a result of a disciplinary process as Employment Tribunals are particularly keen to view contemporaneous notes of events which have led to an employment dispute. Councils will need to give this requirement careful consideration in order to respect employee confidentiality.

3.10 GRIEVANCES RAISED DURING DISCIPLINARIES

In some circumstances when a disciplinary process has commenced an employee chooses to exercise his/her right to raise an internal grievance about the employment relationship with the council or individual Members. The SLCC recommends, in line with ACAS advice, that disciplinary matters are placed on hold until grievances have been aired and actions towards a resolution have been progressed. In exceptional circumstances it is pragmatic to deal with the two disputes concurrently but SLCC would advise caution and specialist advice should be sought if this arises.

3.11 CRIMINAL CHARGES OR CONVICTIONS

If an employee is charged with or convicted of a criminal offence this does not automatically give rise to a disciplinary situation. Consideration needs to be given to how a charge or conviction may affect an employee's ability to undertake his or her job duties and their relationships with the employer, colleagues, subordinates or customers.

4. GETTING IT WRONG

Failure to follow the ACAS Code of Practice (available at www.acas.org.uk) can lead to an Employment Tribunal awarding an uplift of an award against the council of up to 25%. Tribunals dealing with unfair dismissal claims are particularly interested in whether the employer followed a procedure and whether the employer acted fairly and reasonably. One way in which to avoid such a penalty is to have an agreed procedure, communicate that procedure to staff and Members, revisit and review the procedure regularly and have some training for those who are expected to operate the procedure.

Prepared by Bethan Osborne, National HR Advisor SLCC MAY09

FILEY TOWN COUNCIL

GRIEVANCE POLICY

The Council recognises the need for a fair, speedy and consistent process for any employee of the Council to raise a grievance in connection with their employment and will seek to resolve any matters arising from such a procedure.

GRIEVANCE PROCEDURE

1. Informal stage

- 1.1. An employee must first raise their grievance verbally or in writing with the Clerk of the Council. If the grievance is brought by the Clerk of the Council this must first be raised verbally or in writing with the Chairman of the Council. The person approached will attempt to resolve the matter by informal discussion and respond to the employee as soon as possible, within five working days at a maximum. The response to a written request will be in writing and a copy kept by the respondent, who will also keep a note of any verbal grievance aired and response given.
- 1.2. In the event that a grievance is against the Clerk of the Council, an employee may raise the matter informally with the Chairman of the Council who will attempt to resolve the matter and communicate his response in writing to the parties concerned.
- 1.3. It is expected that most grievances will be resolved at the informal stage and it may be necessary to repeat the procedure to reach a satisfactory conclusion for all concerned.
- 1.4. Where it becomes evident that the matter cannot be resolved informally, an employee can instigate the formal procedure.

2. Formal stage

- 2.1. The employee must submit their grievance in writing to the Chairman of the Council who will instruct the Clerk of the Council to convene a meeting of the Staff Grievance and Disciplinary Committee within 7 working days wherever possible subject also to the availability of the employee's representative.
- 2.2. Any employee of the Council attending such a hearing has the right to be accompanied by a representative of the trade union to which they belong (who may or may not be a work colleague), or by a work colleague, friend or adviser not acting in a legal capacity. The employee should advise the Council who their representative is to be. Whilst the representative can speak at the meeting and ask questions, he or she cannot answer questions for the employee.
- 2.3. Following the recognised agenda for such hearings the Committee will hear the cases of both the employee and the person who has sought to resolve the matter informally, if applicable, and question them.
- 2.4. The Committee will seek to reach a decision "in camera" and communicate the decision to the parties concerned verbally after the close of the meeting if the parties so wish.
- 2.5. In the event that the Committee is unable to make the decision e.g. because of the Committee's need to seek further advice or information, the reason for not reaching a decision will be conveyed to the parties concerned.

- 2.6 In any event the decision will be conveyed in writing within 7 working days.
- 2.7. If the employee wishes to appeal against the decision of the Staff Grievance and Disciplinary Committee they must do so in writing to the Chairman of the Council within 10 working days of receipt of the decision notice.
- 2.8. On receipt of such notice of appeal the Chairman of the Council will instruct the Clerk of the Council to convene a meeting of Staff Appeals Committee within 7 working days. The Committee will hear the case according to their procedures and communicate their decision in writing to the parties concerned.
- 2.9. The decision of the Staff Appeals Committee is final.

1. PURPOSE AND SCOPE

It is the policy of the council to give employees the opportunity to air and seek redress for any individual employment grievance which they may have. Grievances may be any concerns, problems or complaints employees wish to raise with the council. This document describes the procedure which aims to facilitate a speedy, fair and consistent solution to an individual employee's employment grievance. This procedure is produced in line with the ACAS Code of Practice 2009 as set out in the Employment Act 2008.

2. PRINCIPLES

- a) At every stage in the procedure the employee will be given the opportunity to state his or her case before any decision is made.
- b) Grievances will be dealt with promptly and consistently
- c) At all formal stages the employee will have the right to be accompanied by a work colleague or trade union representative during the Grievance Hearing.
- d) An employee will have the right to appeal against any outcome of a Grievance Hearing.
- e) At no time will an employee be penalised or victimised for having raised a Grievance against the council

3. PROCEDURE

3.1 Wherever possible, any grievance should be raised informally with the employee's line manager, or if this is inappropriate with the next level of management. In the case of the Clerk to the council raising a grievance this should be directed to the Chair or Mayor of the council unless the complaint is about the Chair or Mayor in which case another Member can be identified to handle the Clerk's concerns. The recipient of the grievance from a clerk should share the grievance with the relevant committee established to handle employment matters and the issues should be treated with discretion and confidentiality at all times.

3.2 **Written Statement:** If the employee does not consider it appropriate to raise the grievance informally, or if requested by the person the employee spoke to informally, then the employee should submit a formal grievance in writing to their line manager, or if this is inappropriate to the next level of management.

3.3 **Meeting or Hearing:** Generally, within a reasonable period of time e.g. five working days of receipt of a written complaint, the line manager or Chair of the appropriately convened committee or hearing panel will arrange a meeting with the employee. The Hearing Manager will endeavour to make the meeting arrangements mutually convenient and will arrange a confidential location, free from interruptions. The manager will investigate the substance of the complaint and hear submissions from the employee concerned together with such other submissions or evidence as s/he shall consider appropriate and take such steps as s/he shall consider necessary to resolve the issue raised. It may be necessary to adjourn the meeting in order for an investigation to take place. Careful consideration of the evidence and the necessary steps required to resolve the problems will be given to the grievance. The employee may call witnesses by prior arrangement with the panel. There is no right for a Member or employee implicated in an employee's grievance to cross examine the aggrieved during a grievance hearing but the panel may wish to make its own investigations through interviewing these individuals and/or other witnesses separately. The Panel may ask the employee what he or she would like to happen as a result of raising the grievance and bear this in mind when preparing the response.

3.4 Response: The Hearing Manager will advise the decision to the employee in writing and, where appropriate, include an action plan to assist in the resolution of the problem. Councils which handle internal disputes effectively generally consider the options and costs in a timely fashion, then agree and publicise the workable solutions, monitor, review and learn from the experience. There may be some value in exploring Mediation as a way in which to resolve differences between two parties. The SLCC can advise on approaches and bodies which may be able to assist (nb external organisations may levy a fee for such services)

3.5 Appeal: If the employee is dissatisfied with the decision of the line manager on his/her complaint, s/he may appeal against the decision to the Chair/Mayor or other elected Member by written notice within five working days of the decision. An Appeal may be raised if:

- The employee thinks the finding, or action plan, is unfair
- New evidence has come to light
- The employee thinks that the procedure was not applied properly

On receipt of the appeal the council's Appeals Panel shall arrange to meet and consult with the employee, the line manager or Members concerned and any other persons, as s/he shall consider appropriate without unreasonable delay. The Appeal Hearing Chair shall consider the issues and shall then take all such steps, as s/he may consider necessary to resolve those issues. Where the council's Chair or Mayor has chaired the initial grievance meeting the Vice Chair or Chair of another committee will hear the appeal as a hearing manager the decision of the Appeal Hearing will be final. The council will need to ensure that the Members involved in the hearings are able to act impartially and reasonably at all times. The outcome of the appeal should be conveyed to the employee in writing in a timely manner.

3.6 Bullying or Harassment: If a grievance concerns alleged bullying or harassment the matter should be reported promptly to the employee's Line Manager, or another manager/Member if more appropriate, with an indication of the required action. The complaint will then be investigated and any action taken and any resolution achieved will be reported back. If the solution is not satisfactory to the complainant, the matter will be discussed further and, if appropriate, an alternative solution agreed. The decision at this stage will generally conclude the enquiry. If a further appeal or review is available the employee will be notified. As a result of an investigation into a claim of harassment disciplinary action may be instigated against any alleged perpetrators of the action or in the case of alleged perpetrators being elected Members a Code of Conduct complaint lodged by the council through the Standards process/Ombudsman in Wales

Refer to the Dignity at Work/Bullying and Harassment Policy for further details

3.7 Right to be Accompanied: At any formal stage of the procedure an employee may be accompanied by a fellow employee of their choice or their trade union representative or official of a trade union (appropriately accredited) but as this is an internal procedure they will not be entitled to be accompanied by any external supporter e.g. partner, parent, solicitor etc. This right to be accompanied is enshrined in the Employment Relations Act 1999. To exercise this right the employee should make a reasonable request. The companion will be allowed to address the hearing, put and sum up the employee's case, respond to views expressed at the hearing and to confer with the employee during the hearing (sometimes in an adjournment) but is not allowed to answer questions on the employee's behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case.

3.8 Hearing Panels

The SLCC advise that councils establish hearing panels to hear disciplinary and grievance hearings on an annual basis so that if a dispute does arise in the workplace the elected members involved are already trained and briefed on their duties as a hearing or appeal panel member. In situations where individual members are implicated in the dispute or have undertaken an investigatory role then they will need to be substituted as panel members.

3.9 Confidentiality: So far as is reasonably practicable, the council will keep any grievance or complaint of harassment confidential between the manager or Member investigating the grievance or complaint, the employee and the person

about whom the grievance or complaint is made. If it is necessary to investigate the matter with any other employee or person, the employee will be so advised.

3.9 Record Keeping: In all cases, written records of the nature of the grievance raised, the employer's response, action taken (with reasons), details of any appeal and subsequent developments will be retained and kept in accordance with the Data Protection Act 1998.

3.10 Grievances raised during Disciplinary

In some circumstances when a disciplinary process has commenced an employee chooses to exercise his/her right to raise an internal grievance about the employment relationship with the council or individual Members. The SLCC recommends, in line with ACAS advice, that disciplinary matters are placed on hold until grievances have been aired and actions towards a resolution have been progressed. In exceptional circumstances it is pragmatic to deal with the two disputes concurrently but SLCC would advise caution and specialist advice should be sought if this arises.

4. GETTING IT WRONG

Following the repeal of the 2004 Dispute Resolution regulations employees no longer HAVE to raise a grievance before going to an employment tribunal. However, establishing a mechanism for differences and disputes to be resolved internally can often allow the employment relationship to continue. Failure to follow the ACAS Code of Practice (available at www.acas.org.uk) when dealing with grievances can lead to an Employment Tribunal awarding an uplift of an award against the council of up to 25%. Tribunals dealing with constructive dismissal and discrimination claims are particularly interested in whether the employer followed a procedure when dealing with an internal dispute and whether the employer acted fairly and reasonably. One way in which to avoid such a penalty is to have an agreed procedure, communicate that procedure to staff and Members, revisit and review the procedure regularly and have some training for those who are expected to operate the procedure.