

DISCIPLINARY AND GRIEVANCE PROCEDURES

1 INTRODUCTION

Following the High Court case of R (Harvey) v Ledbury Town Council [2018] EWHC 1151 (Admin) on 15 May 2018 the way Councils deal with an employee's grievance against a Councillor has changed.

Employees are not able to use the Council's formal Grievance Procedure if the complaint can be dealt with under the Council's Code of Conduct. If the complaint cannot be resolved informally, including the use of mediation, the complaint can only be dealt with by the Principal Authority's Monitoring Officer.

Town and Parish Councils have no power to impose sanctions against Councillors that fall under the Code of Conduct. However, if the complaint is not a Code of Conduct matter, then it can be dealt with under the Council's Grievance Procedure. The Council must also adhere to its duty of care to its employees.

2 DUTY OF CARE

The Council has an ongoing duty of care to its staff, and this continues to be the case if an employee makes a complaint to the Monitoring Officer.

The Council will take all steps that are reasonably possible to ensure the employees' health, safety, and wellbeing. The Council will therefore ensure that:

- Each employee has a clearly defined job description
- Relevant risk assessments are undertaken
- Adequate training is provided
- Feedback on performance and following appraisals is provided
- Employees do not work excessive hours
- Areas for staff breaks are provided to enable rest and relaxation
- Protections are in place from bullying and harassment from colleagues or third parties
- Employees are protected from discrimination
- Employees are protected from bullying
- Employees are able to raise concerns easily and safely
- Consult employees on issues that are concerning them

The Council will do all it is able to keep employees safe from harm.

Employees also have a responsibility for their own health and wellbeing at work. Although employees must obey lawful instruction, they can refuse to undertake anything that is not safe or may be damaging to their health.

3 UNDERSTANDING ROLES WITHIN THE COUNCIL

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All Council staff are employed by the Council as the Corporate Body. Councillors therefore have no inherent authority to instruct staff in their duties.

Councillors will not involve themselves in the day-to-day operations and running of the Council.

The Council will adopt a Scheme of Delegation and a Member/Officer protocol to help clarify and manage the roles of both Councillors and Staff.

If a Councillor has any concerns about the action of any member of staff, they should raise their concern with the Clerk. If it is regarding the Clerk, they should raise it with the Council's Chair of the Staffing Committee. They should not raise it directly with the member of staff.

4 MEETINGS

The disciplinary and grievance arrangements will be dealt with by the HR Committee of the Council.

Disciplinary matters will be decided by a Disciplinary and Grievance Sub-Committee appointed by the main HR Committee. The Sub-Committee will be made up of three HR Committee members and will not include Councillor(s) who have a direct involvement in the disciplinary or grievance matter.

If an appeal is lodged following decision the Appeals Committee will be made up of three Councillors not including those on the Disciplinary and Grievance Sub-Committee or those with a direct involvement in the matter.

The grievance or disciplinary meeting will be held as soon as possible, and the employee will be given reasonable time to prepare. The proceedings will be minuted by a member of staff, if possible.

Employees can be accompanied to the meeting and should make reasonable efforts to attend. Employees have a statutory right to be accompanied by a workplace colleague, a trade union representative, or a trade union official to a grievance, disciplinary or appeal meeting. An employee's request to be accompanied must be reasonable.

If the employee's companion is unavailable to attend the meeting the employee can request a postponement and can propose an alternative date within five working days of the original meeting unless it would be unreasonable not to propose a later date. If the employee does not attend the meeting, then they must be provided with the opportunity to be represented and to make written submissions.

DECISIONS

Employees will be informed promptly in writing of the Council's decision. If possible, the decision will be handed directly to the employee.



The decision will include a notification to the employee that they have a right to appeal.

The form of the Appeal will depend on the individual circumstances of each case. They may range from a review of the original decision (an assessment of whether the grievance was fairly decided on the evidence heard) to a complete re-hearing. A re-hearing will mainly be heard again if an employee was dismissed for reasons that were not part of the disciplinary process.

Council will not increase disciplinary sanctions at the appeal stage except in exceptional circumstances.

INVESTIGATIONS

Misconduct

In the case of misconduct and investigation into the matter will be carried out as soon as possible by the Council. In all cases apart from minor misconduct an independent investigator will be appointed by the HR Committee. The investigator will be independent, fair, and objective and ideally professionally qualified in HR or an experienced investigator. The investigator can be someone from outside of the Council if necessary.

The investigator will submit a report with recommendations to the Disciplinary and Grievance Sub-Committee. The Sub-Committee will then decide whether further action will be taken.

Employees do not have a statutory right to be accompanied to an investigatory meeting, but they are permitted to be accompanied.

Suspension

In certain situations, the Council may decide to suspend the employee with pay whilst the investigation is being undertaken. The investigation will be conducted as expeditiously as possible. Suspensions will normally be appropriate when:

- Working relationships have broken down
- The council has good reason to believe that the employee may interfere with the investigation
- There is a risk to the employee's health or safety
- The work of the Council may be damaged or disrupted

Suspension with pay will only be used as a last resort and any suspension will continually be reviewed by Council to ensure that it does not continue unnecessarily.

Suspensions are only temporary, do not assume guilt and are not a disciplinary action.



Mediation

Mediation is a confidential dispute resolution process that will require the consent of the Council and the employee. Mediation may be appropriate at any stage of the disciplinary procedure especially when communications have broken down or there are allegations of bullying and harassment.

Mediators will not make judgements or determine outcomes. Their main role is to ask questions to help uncover underlying problems, assist the parties to understand the issues and to clarify the options available to help resolve any differences.

DATA PROTECTION

All information relating to grievance and disciplinary matters will be restricted only to those involved in the grievance/disciplinary process, a strict need to know basis. Any disciplinary action or grievance outcome will remain confidential.

The employee's disciplinary and grievance records will be held by Council under the General Data Protection Regulations (GDPR) and the Data Protection Act 2018.

Personal data may be contained in documents used in a disciplinary or grievance procedure such as letters emails, employee statements and GP records.

GDPR only allows personal data to be used for the purpose specified and will not be held any longer than necessary, after which it will be destroyed.

Sensitive personal data such as GP records are subject to stricter regulations.

The Council's GDPR obligations are contained in its Data Protection Policy.



Disciplinary Procedure

1. 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 March 2015.

2. PRINCIPLES

2.1 Underlying principles

- a) No disciplinary action will be commenced against an employee until the case has been fully investigated
- b) At every formal 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.

2.2 Investigation

Any investigation into the conduct, performance or behaviour of an employee is outside the disciplinary procedure and must be conducted, no matter how brief, before the Disciplinary Procedure is implemented.

Ordinarily the investigation will be conducted by the line manager or the Clerk whichever is appropriate. If the allegation is regarding the Clerk, the investigation will be conducted by an external expert previously selected by the HR Committee for such purposes and aware of their role. This will not be the Chair making a decision or instruction on behalf of the Council as it is fulfilling a requirement of this policy.

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2.3 Councillors raising concerns regarding the performance of an officer

If a Councillor is concerned about the level of performance of an officer, they should confidentially make the Clerk aware of their concerns. The Councillor should detail the concerns and what outcome they would like to see. The Clerk will investigate the allegations and determine if disciplinary action is required or if the matter can be resolved by alternative means, such as informal action.

If the officer, the Councillor is concerned about is the Clerk they should make the Chair of the HR Committee aware in order that they may discuss the matter informally with the Clerk and if necessary, after that invoke in accordance with this policy the previously agreed investigation procedures.

3. **THE PROCEDURE FOR MISCONDUCT AND GROSS MISCONDUCT**

3.1 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 rules or procedures
- Failure to perform his/her 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 from a line manager
- Smoking in unauthorised areas
- Failure to follow an agreed Council Policy or Procedure

This list is not exhaustive, and offences of a similar nature may result in disciplinary action being instigated. Persistent or frequent absence on medical grounds and long-term sickness absence will be addressed using a procedure to determine incapacity.

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, its employees or third parties being put at risk.
- Being under the influence of illegal drugs or excessive alcohol
- Bullying including but not limited to 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, Health & Safety, Confidentiality or Email and Internet Policies.
- 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 cause significant loss, damage, or injury
- Accepting bribes or incentive payments from suppliers
- Unauthorised use of Council funds or credit
- Abuse of Council debit cards or supplier accounts
- 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 may result in disciplinary action being instigated at gross misconduct level which carries a potential penalty of dismissal.

3.2 Selection of HR Committee, Disciplinary and Grievance Sub Committee and Appeals Sub-committee

The HR Committee will allocate three Councillors to the Disciplinary and Grievance Sub-committee as and when required. The HR Committee will also determine how an allegation against the Clerk is to be investigated should the need arise. The outside professional support to be utilised will be named at the first meeting of the HR Committee and thereafter saved in the Scheme of Delegation. It will be for the Chair of the HR Committee or in his absence the Vice Chair or the Mayor to contact the external support and let them know they will be needed in accordance with a decision of the Committee.

The Disciplinary and Grievance Sub-Committee will deal with all allegations of gross misconduct and all formal actions relating to the Clerk. The Clerk will deal with all first and second stage allegations. The Appeals Committee will consider all appeals whether against a decision of the Clerk or the Disciplinary and Grievance Sub-Committee.

3.3 Informal action

Minor misconduct will usually 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 the Mayor and Chair of the HR 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.

3.4 Formal action

3.4.1 The level of warning an employee may receive for misconduct/gross misconduct will depend on how serious the Council considers the alleged actions to be and the employee's previous conduct in all the circumstances. In the event of alleged gross misconduct, the formal process may commence at Stage 3 (see 3.5 below).

3.4.2 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 three stages below) and if invoked at Stage 3 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.

3.4.3 Disciplinary Meetings

The time and location of a disciplinary meeting should be agreed with the employee, it will be held in a private location with no interruptions. This will normally be without undue delay but allowing the employee time to prepare his/her case; where practical, within 5 days of the letter being sent. At the meeting the manager (or in the case of the Clerk being disciplined, the Chair of the HR Committee, as 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 providing advance notice has been given that he/she will do so. The Hearing Panel will be made up of three members of the HR Committee and will sit as the Disciplinary and Grievance Sub-Committee. The three Councillors on the panel will be selected so as not to have any previous involvement in the case other than the Chair who may have investigated in the case of the employee being the Clerk.

If the employee is unable to attend the meeting due to unforeseeable reasons out of their control (e.g., illness or their chosen person to accompany is unavailable) then the Council will reasonably rearrange the meeting within a



5-day period. However, if the employee fails to attend the meeting without good reason the meeting can be held in the employee's absence.

3.5 Outcomes and penalties

Stage 1 - First Stage Written Warning

In the instance of a first complaint that conduct does not meet acceptable standards, the employee will normally be given a First Stage Written Warning. He or she will be advised:

- of the reason for the warning,
- that it is the first stage of the disciplinary procedure,
- of the improvement that is required and the timescales for achieving this improvement,
- of a review date and any support available (where applicable)
- that action under Stage 2 or 3 will be considered if there is no satisfactory improvement, and
- of his or her right of appeal.

Stage 2 – Final Written Warning

If there is a failure to improve and conduct or performance is still unsatisfactory, or the misconduct is sufficiently serious, a Final Written Warning will be given to the employee. This will give details of the complaint, will warn that dismissal may result if there is no satisfactory improvement over a specific given timescale and will advise of the right of appeal.

Stage 3 – Dismissal or other sanctions

If conduct is still unsatisfactory and the employee still fails to reach the prescribed standards, or where the Council reasonably believes gross misconduct has occurred, dismissal may result. 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 to appeal.

3.5.1 Time Limit for Warnings

Disciplinary warnings will remain in force for a specified period, this time period will be advised to the employee in writing when being advised of the warning. First Stage Written Warnings will normally be valid for a period of six months and Final Written Warnings normally for a period of twelve months.

Assuming there are no further instances of misconduct or poor performance during this period the warning will no longer be 'live' and will thus be disregarded for future disciplinary purposes, except in agreed special circumstances. In a circumstance where misconduct is so serious that it cannot be realistically ignored for future disciplinary purposes, then this will be set out very clearly in writing with the warning itself.

If there are occasions where an employee's conduct is satisfactory throughout the period the warning is in force only to worsen very soon after and a pattern emerges that there is evidence of abuse, the employee's disciplinary record will then be borne in mind in deciding how long a warning should last.

3.6 Suspension

If an employee is accused of an act of gross misconduct, he/she may be suspended from work on full pay while the Council investigates the alleged offence. Only the appropriately convened committee or Council Officer with delegated powers 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 individual/s who compiles evidence for the disciplinary hearing must play no part in the subsequent decision-making to ensure impartiality. The Council will need to consider the implications of such arrangements on its Hearing Panel and Appeals Committee plans early in the disciplinary process.

3.7 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 Clerk or, in the case of the Clerk, the Mayor 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

The appeal will be heard by Appeals Committee made up 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.

3.8 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 employee to any views expressed at the meeting and 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 his/her case.

3.9 Hearing panels

The Council establishes a HR Committee at each Annual Meeting. At least three members of this Committee will be delegated to hear the original disciplinary. The appeal will be heard by three separate Councillors from the Committee or allocated from elsewhere if there are not sufficient on the committee who do not have a prejudicial interest, they will sit as the Appeals Committee.

Where disciplinary action is taken against the Clerk or for some reason the Clerk is unable to be involved, the Council should look to appoint an external expert to assist throughout the process. This will not be the Chair / Councillor making a decision or instruction on behalf of the Council as it is fulfilling a requirement of this policy.

3.10 Note taking

It is highly recommended that a note-taker be provided to every meeting/hearing which arises because of a disciplinary process, as Employment Tribunals are particularly keen to view contemporaneous notes of events which have led to an employment dispute. If both parties agree, the meeting can be audio recorded. The Council will need to give this requirement careful consideration in order to respect employee confidentiality.

3.11 Grievance raised during disciplinarys



Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

3.12 Criminal charges or convictions

If an employee is charged with or convicted of a criminal offence not involving the Council, 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 their 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 employees and Members, revisit and review the procedure regularly and have some training for those who are expected to operate the procedure.



Grievance Procedure

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 on Disciplinary and Grievance Procedures.

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.

3. PROCEDURE

3.1 Informal Approach

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 raising a grievance this should be in the first instance raised with the Chair of the HR Committee, unless the complaint is about the Chair of the HR Committee in which case the Mayor should handle the Clerk's concerns.

The recipient of the grievance will meet with the employee to discuss the nature of the grievance and establish if an informal approach can be taken, usually by meeting with all involved parties and discussing the concerns.

Discretion and confidentiality will be upheld at all times throughout this process. If required, the Chair of the HR Committee or Mayor, whoever is



dealing with a grievance from the Clerk, may wish to seek external professional support during this process from the Council's HR consultant.

3.2 Formal Approach

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.

If relating to the Clerk, the grievance should be addressed to the Chair of the HR Committee. Likewise, if the Clerk is making the grievance this should be given to the Chair of the HR Committee.

Upon receipt of a formal written grievance, the Chair of the HR Committee will need to take steps to arrange an extra ordinary meeting of the Disciplinary and Grievance Sub-Committee. The Clerk can arrange for the administration to arrange the meeting. If the grievance is made by or about the Clerk, the Chair of the Committee should look to seek external professional support at this meeting. This will not be the Councillor making a decision or instruction on behalf of the Council as it is fulfilling a requirement of this policy.

3.3 Meeting or Hearing

The Clerk will hear all grievances of employees in the first instance unless the grievance is regarding the Clerk or is made by the Clerk. In such instances the initial grievance will be heard by the Disciplinary and Grievance Sub-Committee. In all instances any appeal will be heard by the Appeals Committee.

Generally, within a reasonable period of time e.g., five working days of receipt of a written complaint, the Clerk, line manager or Chair of the Disciplinary and Grievance Sub-Committee (known as the Hearing Manager) 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 Hearing Manager will investigate the substance of the complaint and hear submissions from the employee concerned together with such other submissions or evidence as they shall consider appropriate and take such steps as they 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 Committee may wish to make its own investigations through interviewing these individuals and/or other witnesses separately.

The Committee 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.

It is not practical to expect the entire HR Committee to carry out an investigation into a grievance. The Disciplinary and Grievance Sub-Committee would therefore hold a properly convened meeting to initially discuss the grievance with employee. The Chair of the Disciplinary and Grievance Sub-Committee should take the lead on investigating a grievance further, if deemed necessary by the Sub-Committee having heard the initial grievance, and report findings back to the Sub-Committee at a further properly convened meeting. The Sub-Committee will then discuss the investigation and findings and agree on a response to the grievance.

At any point in the above stages, external support should be sought where felt necessary to ensure a fair and just process is followed.

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.

3.5 Appeal

If the employee is dissatisfied with the outcome of their grievance investigation, they may appeal against the decision by written notice within five working days of the decision. The HR Committee will be convened by the Chairman to appoint at least three Councillors not previously involved to sit as an Appeals Sub Committee. Ideally all members of the Appeals committee should be from the HR Committee, but if that is not possible other Councillors can be used. 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 Committee shall arrange to meet and consult with the employee, the line manager or Members concerned and any other persons, as the Committee shall consider appropriate without



unreasonable delay. This will be a properly convened meeting of the Committee.

The Appeal Hearing Chair shall consider the issues and shall then take all such steps, as they may consider necessary to resolve those issues. The Appeal Committee decision 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 Misconduct

If a grievance is deemed to concern the misconduct of another employee, the Council's Disciplinary Procedure will need to be referred to and separate investigations into the alleged misconduct carried out.

Where the grievance concerns the misconduct/breach of the Code of Conduct of a Member, the employee will be advised that if they wish they can lodge a formal complaint with the Monitoring Officer at Somerset Council, who will lead an investigation in any allegations made.

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 Council establishes a HR Committee at each Annual Meeting. At least three members of this Committee will be delegated to hear the original grievance as the Disciplinary and Grievance Sub-Committee when not dealt with by the Clerk, due to being made by or about the Clerk. The appeal will be heard by three separate Councillors from the Committee or allocated from elsewhere if there are not sufficient on the HR Committee who do not have a prejudicial interest, they will sit as the Appeals Committee. Where disciplinary action is taken against the Clerk or for some reason the Clerk is unable to be involved, the Council should look to appoint an external expert to assist throughout the process. This will not be the Chair / Councillor making a



decision or instruction on behalf of the Council as it is fulfilling a requirement of this policy.

In situations when 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 Clerk, line manager, Committee 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.

3.10 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 2018.

3.11 Grievances raised during Disciplinary Proceedings

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. Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently.

