**North Luffenham Parish Council Disciplinary and Performance Capability Policy.**

This policy was adopted by Council at its Meeting on 16th May 2022. Minute reference \*\*\*\*.

1. **Introduction**

This policy is based on and complies with the 2015 ACAS Code of Practice [www.acas.org.uk/acas-code-of-practice-for-disciplinary-and-grievance-procedures/html](http://www.acas.org.uk/acas-code-of-practice-for-disciplinary-and-grievance-procedures/html) and both theData Protection Act 2018 and the UK GDPR.

This document applies to all employees. The Council aims to ensure that there will be a fair and consistent approach to the management of employee conduct and performance, clearly separating the concepts of conduct and performance capability.

The Council will take all necessary steps to ensure that it adopts a fair and non-discriminatory procedure that complies in full with all relevant statutory or contractual obligations that the Council may be subject to when dealing with any employee in relation to any disciplinary matter.

Wherever possible, the Council, and/or the Staffing Committee where appropriate, will try to resolve concerns about employee(s) behaviour/performance informally, without starting the formal procedure set out below.

This policy does not form part of any employee's contract of employment. The Parish Council reserves the right to change this policy at any time and in any event will review it on a periodic basis.

1. **Definitions**

To determine whether an action is misconduct or performance capability it is necessary to establish whether the action is a ‘will not’ or ‘cannot’ decision and outcome on the part of the employee.

**Will not:** Misconduct is defined as ‘will not’.

**Cannot:** An employee given adequate training and support, but fails to meet expected levels of performance, ‘cannot’.

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| Cannot | Will not |
| Does not possess the right skills | Refuses to accept instructions |
| Does not have the necessary ability | Disregards instructions and performs tasks in their own unauthorised way, despite training. |
| Has not received appropriate training | Refuses to engage in training, coaching or support offered |

1. **Probation period**

If an employee's performance while in their probationary period has been unsatisfactory and it is thought unlikely that further training or support would lead to a satisfactory level of improvement or they are guilty of misconduct following investigation, the Parish Council may terminate employment with immediate effect and the employee would not be entitled to notice or pay in lieu of notice.

**4.0 Dealing with issues of Misconduct and Performance Capability**

The Parish Council recognises that where possible the best way to resolve problems is in the first instance to do this informally through discussion, guidance and support aimed at encouraging employees to change their behaviour and/or conduct.

This will be achieved using the informal procedure laid out in the disciplinary or capability guidelines. When informal measures have not resulted in satisfactory improvement, the formal procedures will be followed.

In severe cases, or cases of gross misconduct, the Parish Council reserves the right to move directly to the formal section of the disciplinary process.

During this process, the following guidelines apply:

* No formal action will be taken against any employee until the necessary investigations have been completed and the employee has had the chance to respond to them.
* If required, employees will be given reasonable notice of the requirement to attend a formal disciplinary hearing and will be provided in advance with any evidence that will be considered at the hearing.
* The hearing procedure should be conducted without unreasonable delay on the part of the employee or the Parish Council.
* Should an employee persistently fail or be unwilling to attend a hearing without good reason, the meeting may take place in their absence and a decision made based on the information and evidence available at that time.
* At all hearings (disciplinary and performance capability), employees are entitled to be accompanied by a representative.
* Employees may question witnesses (via the meeting/hearing manager where appropriate).
* If applicable, sanctions taken against an employee will be confirmed in writing and a copy of the written document held on the employee’s personnel file. If the Councillor conducting the investigation concludes that there is no case to answer, the employee will be notified in writing.
* Sanctions will be proportionate to the offence and will be applied consistently considering the employee’s previous record and service, any mitigation, and other relevant factors.
* In cases which appear to involve gross misconduct, an employee may be suspended from work on full pay whilst the case is being investigated. This is not an assumption of guilt in connection with the investigation and is not meant to penalise the employee. It is not considered as formal disciplinary action.
* Where events are subject to police investigation or legal proceedings, the Parish Council will have the discretion to proceed with suspension, local investigation, and any disciplinary action.
* All employees will have the right to appeal against any formal disciplinary or performance capability outcome within 5 working days of receipt of the decision in writing unless they are within their probation period.
* Appeals should be submitted in writing to Parish Council Chair, clearly outlining the grounds for the appeal.

**Dismissal**

* The Council will consider very carefully a decision to dismiss.
* Where an employee has been employed for two or more continuous years, is pregnant or is on maternity leave, the employee will receive a written statement of the reasons for his/her dismissal.
* The date on which the employment will end and details of his/her right of appeal will be outlined.
* In all other cases where an employee is dismissed, the employee will receive a written statement of the date on which the employment will end and details of his/her right of appeal. However, the Council will not be under any obligation to provide reasons for the dismissal and the employee will only receive a written statement of the reasons for his/her dismissal where it is deemed appropriate by the Council to do so.

**Dealing with Appeals**

In general, appeals are made on one or more of the following grounds:

* New evidence has become available, and the employee wishes the company to consider this as it may affect the earlier decision.
* The correct procedure was not followed.
* The original decision was not within the band of reasonable responses; or
* The original decision was not consistent with sanctions for similar disciplinary/performance capability cases.