



Burton Upon Stather Parish Council

Disciplinary Policy & Procedure

1 Purpose

- 1.1 The purpose of this policy and procedure is to ensure that the Parish Council provides a framework within which managers can maintain satisfactory standards of conduct and to achieve improvement where necessary.
- 1.2 This policy and procedure is written in line with the Council's commitment to safeguarding, health safety and welfare, equality diversity and inclusion and data protection.

2 Scope

- 2.1 This policy and procedure:
 - applies to all employees, regardless of length of service with the Council unless in probation when the Probation Policy and Procedure will apply
 - does not apply to self-employed contractors. Any conduct concerns will be dealt with under the terms of their engagement
 - Any conduct concerns relating to volunteers will be referred to the Clerk
- 2.2 The policy and procedure is used to deal with misconduct. It does not apply to cases involving genuine sickness absence, proposed redundancies or poor performance. In those cases, reference should be made to the appropriate policy or procedure.
- 2.3 This policy and procedure does not form part of an employee's contract of employment and the Council may amend it at any time. The Council may also vary this procedure, including any time limits, as appropriate in any case.
- 2.4 The Personnel Committee/Parish Council may consider action under this procedure as a result of an investigation of an external complaint.
- 2.5 The Personnel Committee/Parish Council has the discretion to authorise the continuation of disciplinary proceedings after an employee has left the Council's employment, depending on the circumstances.

3 Responsibilities

- 3.1 The Personnel Committee has overall responsibility for the effective operation of the procedure.
- 3.2 Managers have a specific responsibility to ensure that they, and their staff, are fully aware of this policy and procedure and that it is fairly applied to ensure its success wherever possible.

- 3.3 All employees are responsible for following the procedure in an appropriate and professional manner to ensure its success.
- 3.4 Trade union colleagues have a responsibility to support the operation of Parish Council policies and procedures and support employees through relevant processes. They should work with employees and managers towards informal resolutions and improvements wherever possible.

4 **Relevant Legislation**

- 4.1
- Employment Rights Act 1996
 - Employee Relations Act 1999
 - Trade Union and Labour Relations (Consolidation) Act 1992
 - ACAS statutory Code of Practice
 - Health and Safety etc at Work Act 1974
 - Equality Act 2010 (Amendment) Regulations 2023

5 **The Policy and Procedure**

It is our policy to ensure that any disciplinary matter is dealt with fairly and consistently and that steps are taken to establish the facts and to give employees the opportunity to respond before taking any formal action.

5.1 **File Notes**

5.1.1 Minor conduct issues can often be resolved informally between the employee and the employee's line manager. These discussions should be held in private and without undue delay whenever there is cause for concern. The purpose of such meetings is to support, educate, improve and avoid recurrence of issues. A file note (see Appendix 1) of any such informal discussions will be placed on the employee's personnel file. The note would be removed from the personnel file after six months if there is no repeat or escalation of the issue. If the employee does not accept the file note then the Council reserves the right to move to a formal hearing if deemed appropriate.

5.1.2 Formal steps will be taken under this procedure if the matter is not resolved or is repeated within six months, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).

5.2 **Confidentiality**

5.2.1 Our aim is to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter except for disclosing information in order to receive advice and support from a trade union representative or for welfare support.

5.2.2 The employee, and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure without consent. CCTV may be used as evidence where required.

5.2.3 The employee will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against them. Where the Council considers there may be a risk to the person giving evidence, or there is a specific request, the identity of a witness may remain confidential.

5.2.4 Information about protecting the confidentiality of witnesses within internal investigations is available from the Information Commissioners Office at <https://ico.org.uk/>

5.3 **Investigations**

5.3.1 The purpose of an investigation is for us to establish a fair and balanced view of the facts relating to any disciplinary allegations against the employee, before deciding whether to proceed with a disciplinary hearing. The scope of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from the employee and any witnesses, and/or reviewing relevant documents, which could include reviewing CCTV footage. An Investigating Officer will be appointed by the Council to carry out the investigation. In some circumstances, suspension of the employee may be necessary before an investigation can take place.

5.3.2 Investigative interviews are solely for the purpose of fact-finding and no decision or sanction will be issued until after a disciplinary hearing has been held.

5.3.3 The employee may be accompanied at an investigation meeting. The Council allow for the employee to bring a colleague, or TU Representative if the employee wishes to do so (see paragraph 5.7) to provide additional support.

5.3.4 The employee must cooperate fully and promptly in any investigation. This will include informing us of the names of any relevant witnesses, disclosing any relevant documents to us and attending investigative interviews if required.

5.3.5 If employees are asked to attend an investigatory meeting as a witness, there is an expectation that they will participate. It may be agreed that statements will not be shared with the other party.

In some cases, the Council reserves the right, in line with ACAS Guidance on internal investigation to not release certain information that may be considered sensitive or personal under data protection legislation. The Council will also protect the confidentiality of any witness who requests the Council do so.

5.4 **Managing allegations**

5.4.1 There are instances where it is alleged that employees' conduct may fall short of what we would normally expect but are more serious than can be managed by line managers. Allegations of this nature will be investigated to establish the facts before a course of action, if any, is decided upon.

5.4.2 There are two levels of concerns and allegations:

1. Concerns / allegations that may meet the harm threshold.

2. Concerns / allegations that do not meet the harm threshold – referred to for the purposes of this guidance as 'low-level concerns'.

5.4.3 The Council's policies and procedures are consistent with local safeguarding procedures and practice guidance and the Council's policies on Safeguarding, Disciplinary and Behaviour Framework/Code of Conduct.

5.4.4 There are instances where an alleged act/allegation of misconduct may also constitute a criminal offence. The nature and scope of the managing allegations process and any subsequent disciplinary process is separate from the nature and scope of a criminal process.

- 5.4.5 The Council may not wait for the outcome of any police/external enquiries before deciding what action, if any, to take. Where an employee has been advised not to discuss the pending criminal matter, the Council may have to take decisions based on the available evidence.

If the criminal allegations involve a potential safeguarding aspect the Council may suspend the employee until a full investigation has been undertaken. The Personnel Committee will consult with the Designated Safeguarding Lead and take account of any recommendations they may make to manage any risk to young people and/or vulnerable adults.

Where the Council is notified by the Local Authority Designated Officer (LADO) of a potential safeguarding concern, the Council will advise the employee and may, based on the advice of LADO or other external agencies, suspend the employee from their role. The outcome of the LADO/Managing Allegations process may result in disciplinary action and the employee will be advised any such action will be for safeguarding reasons.

A criminal/external investigation, pending investigation, charge or conviction relating to language/behaviour/conduct, or behaviour which contravenes the Code of Conduct, outside of work may be treated as a disciplinary matter if the Council consider that it could be a risk and/or relevant to the employee's employment or status outside of work.

At any point, referral to an external agency may be made. The employee may not be made aware of this.

If a grievance is raised during the disciplinary process, the Council may pause the process and investigate the grievance, where the grievance is relevant and may affect the outcome of the disciplinary process.

5.5 Suspension

- 5.5.1 In some circumstances, the Council may need to suspend the employee from work. This will only be done as a last resort, for example where there is the potential for gross misconduct or a risk for any employee/individual's welfare. In such cases where a suspension is required, before the employee is suspended the Personnel Committee must agree the suspension.

- 5.5.2 Suspension will be for no longer than is necessary to investigate any allegations of misconduct against the employee or so long as is otherwise reasonable while any disciplinary procedure against the employee is outstanding. The Council will confirm the arrangements to the employee in writing. Suspension may be ended if risk to wellbeing is reduced.

- 5.5.3 While suspended the employee should not visit the Council's premises or contact any of the Council's clients, customers, suppliers, contractors, staff or Councillors, unless the employee has been authorised to do so by the Personnel Committee. The employee's IT access will be suspended.

During the suspension from site the employee may contact their trade union representative and arrange to meet them off site.

Suspension is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. The employee will continue to receive their full salary and benefits during the period of suspension.

Suspensions should always be carried out by the Personnel Committee.

Any employee who is suspended will be allocated a Personnel Committee contact to support their wellbeing and maintain regular contact.

5.6 **Notification of a hearing**

- 5.6.1 Following any investigation, if the Council considers there are grounds for disciplinary action, the employee will be required to attend a disciplinary hearing.

The Council will inform the employee in writing of the allegations against them, the basis for those allegations, and what the likely range of consequences will be if the Council decide after the hearing that based on a balance of probabilities and reasonable belief the allegations are true. The Council will also include the following where appropriate:

- a) a summary of relevant information gathered during the investigation.
- b) a copy of any relevant documents which will be used at the disciplinary hearing; and
- c) a copy of any relevant witness statements, except where a witness's identity is to be kept confidential, in which case the Council will give the employee as much information as possible while maintaining confidentiality.

5.6.2

The Council will give the employee written notice of the date, time and place of the disciplinary hearing. The hearing will be held as soon as reasonably practicable, but the employee will be given a reasonable amount of time, a minimum 10 working days to prepare their case based on the information the Council has given them. With the employee's agreement disciplinary hearings may be arranged sooner if all the evidence is available and the employee wants to progress the matter faster.

5.7 **The right to be accompanied**

- 5.7.1 The employee may bring a companion to any disciplinary hearing or appeal hearing under this policy and procedure. The companion may be either a trade union representative or a colleague. The employee must inform a member of the Personnel Committee who their chosen companion is, in good time before the hearing.

- 5.7.2 If the employee's companion is unavailable at the time a meeting is scheduled and will not be available for a meeting more than five working days afterwards, the Council may ask the employee to choose someone else.

5.8 **Procedure at disciplinary hearings**

- 5.8.1 If the employee or their companion cannot attend the hearing, they should inform the Council immediately and the Council will arrange an alternative time within 5 working days. The employee must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If the employee fails to attend without good reason on two occasions or is persistently unable to do so (for example for health reasons), the Council may have to take a decision based on the available evidence.

- 5.8.2 The hearing will be chaired by a member of the Personnel Committee. The Investigating Officer will also be present, along with a note taker.

- 5.8.3 At the disciplinary hearing the allegations against the employee and the evidence that has been gathered will be fully considered. The employee will be able to respond and present any evidence of their own. The employee's companion may make representations and ask questions but should not answer questions on the employee's behalf. Should the employee wish to confer privately with their companion at any time during the hearing they should request an adjournment and speak to their companion outside the meeting.

- 5.8.4 The employee may ask relevant witnesses to appear at the hearing, provided the employee gives sufficient advance notice to arrange their attendance. The employee will be given the opportunity to respond to any information given by a witness. However, they will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, it is decided that a fair hearing could not be held otherwise.
- 5.8.5 The Council may adjourn the disciplinary hearing if it is necessary to carry out any further investigations such as re-interviewing witnesses in the light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened, within a reasonable timescale dependent on the nature and scope of the investigation.
- 5.8.6 The Council will inform the employee in writing of the decision and the reasons for it, usually within 10 working days of the disciplinary hearing.

5.9 **Disciplinary outcomes**

- 5.9.1 The usual outcomes for misconduct, over and above a file note, are set out below. These outcomes will not usually be imposed without a hearing, (see verbal warning section), unless the employee agrees to a sanction outside of the usual hearing process, at the discretion of the Personnel Committee. The Council will treat all employees fairly and consistently, and an outcome imposed on another employee for a similar misconduct will usually be considered but should not be treated as a precedent. Each case will be assessed on its own merits and the Council reserves the right to issue a warning at any of the stages described below as appropriate.

The employee will not normally be dismissed for a first act of misconduct, unless the Council decide it amounts to gross misconduct or the employee has not yet completed their probationary period. For a list of possible misconduct and gross misconduct offences please see Appendix 2.

- 5.9.2 **Stage 1 - Verbal warning.** A verbal warning may be issued by the employee's line manager in conjunction with the Personnel Committee. It will usually be appropriate for a minor/first act of misconduct and could be in relation to an issue raised in a file note. On the advice of a member of the Personnel Committee/external HR Consultant, it may not be necessary to hold a disciplinary hearing. Verbal warnings will be confirmed in writing to the employee.
- 5.9.3 **Stage 2 - First written warning.** A first written warning may be authorised by the chair of the panel. It will usually be appropriate for an act of misconduct where there are active verbal warnings or File Notes on the employee's disciplinary record, or for misconduct that the Council considers sufficiently serious to warrant a written warning even though there are no other active warnings on the employee's record.
- 5.9.4 **Stage 3 - Final written warning.** A final written warning may be authorised by the chair of the panel. It will usually be appropriate for:
- (a) misconduct where there is already an active written warning on the employee's record; or
 - (b) misconduct that the Council consider sufficiently serious to warrant a final written warning even though there are no other active warnings on the employee's record.
- 5.9.5 **Stage 4 - Dismissal.** Dismissal must be authorised by the Full Council following advice from external HR Consultants. It will usually only be appropriate for:
- (a) any misconduct during the employee's probationary period.
 - (b) further misconduct where there is an active final written warning on the employee's record; or
 - (c) any gross misconduct regardless of whether there are active warnings on the employee's record. Gross misconduct will usually result in immediate dismissal without notice or

payment in lieu of notice (summary dismissal). Examples of gross misconduct are appended to this document (Appendix 2).

(d) Some other substantial reason

5.9.6 **Actions short of dismissal.** In some cases, the Council may, at its discretion, consider alternatives to dismissal. These must be agreed by the Full Council following advice from external HR Consultants and will usually be accompanied by a final written warning.

Examples include:

- (a) Demotion.
- (b) Loss of future pay increment or bonus.

5.10 **The effect of a warning**

- 5.10.1 Written warnings will set out the nature of the misconduct, the change in behaviour required, the period for which the warning will remain active, and the likely consequences of further misconduct in that active period.
- 5.10.2 A first written warning will usually remain active for six months and a final written warning will usually remain active for 12 months. In exceptional cases verging on gross misconduct, or for safeguarding concerns, a final written warning may state that it will remain active indefinitely. The employee's conduct may be reviewed at the end of a warning's active period and if it has not improved sufficiently the Council may decide to extend the active period.
- 5.10.3 After the active period, the warning will remain permanently on the employee's HR file but will be disregarded, unless a safeguarding concern, in deciding the outcome of future disciplinary proceedings.
- 5.10.4 Staff who have a disciplinary sanction in place will not be eligible for the annual pay increment and/or any cost of living pay increases or bonuses.

5.11 **Appeals**

- 5.11.1 If the employee feels that a disciplinary sanction taken against them is wrong or unjust they should appeal in writing, stating their full grounds of appeal, including any new evidence, to the Chair of the Personnel Committee within 10 working days of the date on which the employee was informed of the outcome.
- 5.11.2 If the employee is appealing against dismissal, the date on which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if the employee's appeal is successful, they will be reinstated with no loss of continuity or pay.
- 5.11.3 If the employee raises any new matters in their appeal, the Council may need to carry out further investigation. If any new information comes to light the Council will provide the employee with a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will have a reasonable opportunity to consider this information before the hearing, and the employee or their companion may comment on any new evidence arising during the appeal before any decision is taken.
- 5.11.4 The Council will give the employee written notice of the date, time and place of the appeal hearing. This will normally be a minimum of 10 working days after the employee receives the written notice.

- 5.11.5 The appeal hearing will not be a complete re-hearing of the matter. It will be a review of the fairness of the original decision in the light of the procedure that was followed and any new information that may have come to light.
- 5.11.6 The appeal hearing will be conducted by the Chair of the Parish Council. The Investigating Officer, and the Personnel Committee who conducted the disciplinary hearing will also usually be present.
- 5.11.7 The Council may adjourn the appeal hearing if the Council need to carry out any further investigations in the light of any new points the employee has raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened, after the further investigations are complete.
- 5.11.8 Following the appeal hearing the Council may:
- (a) uphold the appeal
 - (b) not uphold the appeal; or
 - (c) partially uphold the appeal

The Council will inform the employee in writing of the final decision as soon as possible, usually within 10 working days of the appeal hearing. There will be no further right of appeal.

6 Relevant Policies and Procedures

- 6.1
- Code of Conduct
 - Equality & Diversity policy
 - Safeguarding Policy

7 Who to Contact with Queries

- 7.1 It is recognised the process could be stressful. For additional support and guidance please refer to the staff welfare handbook.
- 7.2 Where requested by witnesses, confidentiality will be maintained, and witnesses will not suffer any detriment resulting from their participation in the process.
- 7.3 The policy and procedure will be monitored by the Personnel Committee.

8 Communication

- 8.1 The Disciplinary Policy and Procedure will be made available via the Council website or from the Clerk.

APPENDIX 1

FILE NOTE

| | |
|---|--|
| File Note: | (Nature of discussion, i.e. breach of confidentiality, performance concerns) |
| Employee Name: | |
| Line Manager: | |
| Date of Discussion: | |
| Summary of Discussion including employee's comments: | (A brief outline of the incident reported and the discussion which followed) |

Support offered/ temporary interventions put in place to support the employee.

(Training, etc. to prevent a breach again)

Signature of Employee

.....

Signature of Line Manager

.....

APPENDIX 2

These Disciplinary Rules of Conduct should be read in conjunction with the Disciplinary Policy and Procedure. The aim of the Disciplinary Rules and Disciplinary Policy and Procedure is to set out the standards of conduct expected of all staff and to provide a framework within which managers can work with staff to maintain those standards and encourage improvement where necessary.

The Council may amend the Disciplinary Rules at any time.

Rules of conduct

While working for the Parish Council the employee should at all times maintain professional and responsible standards of conduct. In particular the employee should:

1. observe the terms and conditions of their contract, particularly with regard to:
 - a. hours of work
 - b. confidentiality
 - c. exclusivity of service
2. ensure that they understand and follow our Code of Conduct which is available on the website or from the Clerk
3. observe all our policies, procedures and regulations which are available on the website or from the Clerk
4. take reasonable care in respect of the health and safety of colleagues and third parties and comply with the Health and Safety Policy
5. comply with all reasonable instructions given by managers; and
6. act at all times in good faith and in the best interests of the Council, councillors, colleagues, residents/customers.

Misconduct

The following are examples of matters that will normally be regarded as misconduct and will be dealt with under our Disciplinary Procedure:

1. Any escalation of a file note, or if more than one file notice is in place at the same time for different issues
2. Minor breaches of our all policies/codes of conduct/values
3. Minor breaches of Health & Safety requirements
4. Minor breaches of the employee's contract
5. Minor damage to, or unauthorised use of, our property
6. Poor timekeeping
7. Time wasting
8. Unauthorised absence from work and/or failure to follow processes for applying for leave
9. Refusal to follow instructions
10. Excessive use of our telephones for personal calls
11. Excessive personal e-mail or internet usage
12. Obscene language or other offensive behaviour
13. Negligence in the performance of their duties
14. Smoking/vaping in non-designated areas.

This list is intended as a guide and is not exhaustive.

Gross misconduct

The following are examples of matters that are normally regarded as gross misconduct:

1. Any escalation of misconduct
2. Theft, or unauthorised removal of our property or the property of a colleague, contractor, or member of the public
3. Fraud, forgery or other dishonesty, including fabrication of expense claims, or self-certification forms
4. Emotional and physical violence or bullying or intimidatory conduct; coercive controlling behaviour
5. Deliberate and/or serious damage to property
6. Serious misuse or damage of our property or name
7. Unauthorized accessing internet sites containing inappropriate images, offensive or obscene material
8. Repeated or serious failure to obey instructions, or any other serious act of insubordination, including unauthorised absence or failure to follow processes for applying for leave
9. Bringing the organisation into serious disrepute, either in or outside of work, including use of private social media platforms that contravene any of Council's Values, Policies and Procedures
10. Incapability at work brought on by alcohol or substances
11. Causing loss, damage or injury through serious negligence
12. Serious breach of health and safety rules
13. Serious breach of confidence
14. Serious breaches of our all policies/codes of conduct/values
15. Accepting or offering a bribe or other secret payment, or other breach of financial regulations
16. Conviction for a criminal offence that in our opinion may affect our reputation or our relationships with our staff, customers or the public, or otherwise affects the employee's suitability to continue to work for us
17. Failure to disclose criminal convictions not exempt under the terms of the Rehabilitation of Offenders Act 1974;
18. Failure to disclose safeguarding issues, pending investigations or interactions with external safeguarding agencies
19. Possession, use, supply or attempted supply of drugs whether prescribed or illegal the magic phrase that
20. Serious neglect of duties, or a serious or deliberate breach of their contract or operating procedures
21. Knowing breach of statutory rules affecting their work
22. Unauthorised use, processing or disclosure of personal data
23. Bullying or harassment of, or discrimination against, employees, contractors, clients or members of the public related to age, disability, gender reassignment, pregnancy and maternity, race (including ethnic or national origins, colour or nationality), religion or belief (including lack of belief), sex, sexual orientation
24. Sexual harassment, harmful sexual behaviour, offences of a sexual nature or sexual misconduct at work
25. Behaviour which could be deemed as grooming
26. Refusal to disclose any of the information required by their employment or any other information that may have a bearing on the performance of their duties; Giving false information as to qualifications or entitlement to work (including immigration status) in order to gain employment or other benefits
27. Making a disclosure of false or misleading information maliciously, for personal gain, or otherwise in bad faith
28. Violation of safeguarding policies
29. Making untrue allegations in bad faith against a colleague/councillor

30. Carrying out another job in Council time
31. Victimising a colleague who has raised concerns, made a complaint or given evidence or information under our Grievance Procedure, Disciplinary Procedure, or otherwise
32. Serious misuse of our information technology systems (including misuse of developed or licensed software, use of unauthorised software and misuse of e-mail and the internet, including sending malicious messages either internally or externally)

This list is intended as a guide and is not exhaustive.