

# BILDESTON PARISH COUNCIL DISCIPLINARY POLICY & PROCEDURE

Adopted by the Parish Council on 9<sup>th</sup> October, 2019

## **DISCIPLINARY POLICY AND PROCEDURE**

### **1. POLICY STATEMENT**

It is important that all Bildeston Parish Council employees are aware of the standards of behaviour expected of them, however, the Council recognises that there may be times when an employee's conduct or behaviour falls below that which is expected. Many disciplinary issues can be resolved informally and promptly by the employee's immediate manager, before resorting to the formal procedures. The use of regular supervision, coaching and setting of clear goals and targets for employees, can be effective in improving conduct and performance. Managers are encouraged and expected to seek improvement using informal means wherever possible.

The Council aims to ensure that individuals involved in the disciplinary process are treated fairly, with dignity and respect. The Council promotes an inclusive and supportive environment for staff, in accordance with the Council's Equalities Policy and with regard to age, disability, gender, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief or sexual orientation.

The stages of the procedure conform to the requirements of the ACAS Code of Practice and other statutory regulations so any variation to the procedure could jeopardise the fairness of the disciplinary action.

### **2. PURPOSE OF THE DISCIPLINARY POLICY**

The Disciplinary Policy aims to:

- Set standards of behaviour, conduct and performance
- Encourage employees to meet those standards
- Deal fairly and consistently with employees who do not improve to meet those standards and identify ways to help them improve
- Be applied in a consistent, fair and prompt way

This policy is designed to handle matters of potential conduct quickly, thoroughly and fairly in order to prevent them from escalating into more serious issues. It is important that each stage of the policy is exhausted before moving to the next, should that be necessary, unless gross misconduct is established, in which case dismissal can be with immediate effect. The Policy will be used where behaviour, conduct or performance falls short of the required standard and it is suspected that this is wilful or deliberate on the part of the employee.

Where performance issues are not considered to be wilful then this should be dealt with under the Capability Policy.

### **3. SCOPE**

This policy applies to all Council employees.

### **4. DEFINITIONS OF DISCIPLINARY ACTION**

It is quite possible that, following an investigation, the result may be that no further action is taken. This is a legitimate outcome that, once agreed, must be conveyed to everyone involved in the process.

#### **4.1 Informal Action**

Acts that may constitute informal action are generally, but not limited to, those of minor misconduct. Employees do not necessarily have to have been through informal action first before formal action is considered.

It is not usual for an employee to be accompanied at the informal stage.

At a meeting with the employee the manager should:

- Present details of the alleged misconduct to the employee
- Give the employee a full opportunity to respond and explain any mitigating factors (e.g. medical issues)
- Give thorough consideration to the employee's response and decide what action is required. E.g. it may become apparent during the discussion that it is not a disciplinary matter and that the capability policy applies or reasonable adjustments are needed
- Decide on what informal action is appropriate e.g. clear notes to record the discussion with the required level of improvement in a stated timescale with any support noted. It should be clear that this is a record of the discussion and should not constitute a warning. A copy should be given to the employee and a copy kept separately from their personal file.

#### **4.2 Formal Action**

The undertaking of disciplinary action must be given priority and employees taking part, whether as Investigating Officers, witnesses, or Chair of any formal hearing, must be provided with the necessary assistance and resources to deal with the matter within appropriate timescales, wherever possible.

The employee should be notified of the allegations against them and that an investigation is taking place. They will need to be interviewed as part of the investigation along with any witnesses so that an investigation report can be compiled for submission to the Chair of the Disciplinary Hearing.

A Councillor, other employee or independent external investigator can undertake the investigation.

In some circumstances, the investigation may assess that no further disciplinary action is required or that informal management action is appropriate. If the latter is established, then the record detailed in informal action (4.1) above should be compiled.

### **5 RIGHT TO BE ACCOMPANIED**

At all formal disciplinary meetings, employees are entitled to be accompanied by either a work colleague or trades union representative. The person who accompanies them may address the meeting or confer with the employee during the course of it. However, they may not answer questions on their behalf. If the employee wishes to bring a colleague or trade union representative with them, it is their responsibility to notify them of the time and venue of the meeting. Any work colleague who accompanies employees will be given reasonable time off to attend. If their chosen companion is not available then they will be given the opportunity to postpone the meeting until a reasonable time, however this must be within the next five working days. Where they ask to be accompanied by someone other than a work colleague or Trades Union representative then advice should be sought before confirming agreement.

There may be instances where employees have difficulty making themselves understood, particularly where English is not their first language, or they have difficulty in expressing themselves due to a disability. In these circumstances, it may be appropriate for an interpreter to attend.

## **6 MISCONDUCT**

Acts that may constitute misconduct are generally, but not limited to those where an employee does not improve to the required standard following informal action, or behaviour is sufficiently serious.

Examples of misconduct include:

- Bullying
- Harassment
- Refusing to do work ('insubordination')
- Being absent without permission
- Failure to wear or use appropriate safety equipment made available or necessary for the job
- Abuse of internet, email or social media e.g. posting derogatory comments about the council, colleagues or service users

(this list is provided for illustrative purposes, is not exhaustive and in some instances may be considered gross misconduct)

Where misconduct has been established the disciplinary action may be:

- A written warning – remains live for no longer than 6 months from date of issue
- A final written warning – remains live for no longer than 12 months from date of issue
- Demotion or transfer to another job as an alternative to dismissal.
- Dismissal - if an earlier final written warning is still current and/or the circumstances of the current offence so justify dismissal.

## **7 GROSS MISCONDUCT**

Where gross misconduct has been established dismissal, without notice will apply.

Examples of gross misconduct include:

- Fraud (including falsification of timesheets and expenses)
- Theft
- Physical violence
- Defamation, data protection and privacy violations e.g. libellous/slandorous comments about service providers, divulging protected personal data etc.
- Serious lack of care to duties or other people ('gross negligence')

(this is not an exhaustive list and is provided for illustrative purposes).

## **8. APPEAL**

Following the hearing, employees have the right of appeal against the decision reached. The employee must register in writing (or other accessible format) their intention to appeal

within 10 working days from the date of the letter informing them of the disciplinary action or they will be deemed out of time.

## 9 DISCIPLINARY PROCEDURE

Where a formal disciplinary hearing is considered appropriate, arrangements for the hearing will be made as soon as is reasonably practicable.

A disciplinary panel consisting of the two Councillors with no prior involvement in the case, will hear all the evidence and decide the outcome.

- The employee will be notified in writing (or other accessible format) of the time and venue of the hearing, the allegations against them and their right to be accompanied by a trade union representative or work companion (see (5) below). Without pre-empting the outcome of the hearing, if the case against them is gross misconduct and/or may result in dismissal, this must be included in the letter inviting them to the hearing (*i.e. 'depending on the facts established at the hearing the outcome could be any of the following; no formal action, disciplinary action including a written warning or a final written warning, your dismissal or some other action. A decision on this will only be made once you have had a full opportunity to put forward your version of events'*). They will be provided with at least ten working days' notice of the date of the hearing.
- The employee will be required to provide any documentation or witness details that they wish to be considered at the hearing at least seven working days beforehand to allow distribution.
- The Chair of the panel should ensure that a note taker takes clear notes of the hearing, that there is reasonable conduct throughout and that the hearing is not rushed through lack of time nor conversely does not continue for overly extensive periods without break or adjournment.
- The Chair will introduce everyone, outline the procedure for the hearing, clarify the allegation and ensure that the employee is represented if they so wish.
- **The case for the employer** – the manager presenting the case (usually the investigating officer), will make an opening statement summarising their case and then present their case in full, calling all witnesses as necessary. The employee will be able to ask questions of the manager presenting the case and of any witnesses after they have given evidence. The Chair may also ask questions of the manager and of each witness.
- **The case for the employee** – The employee or their representative will make an opening statement and present their case in full, calling witnesses as necessary. The manager presenting the case (the investigating officer) will be able to ask questions of the employee and of each witness after each has given evidence. The Chair may also ask questions of the employee and of each witness.
- **Re-examination** – The Chair will give both parties the opportunity to re-examine any evidence before proceeding to the next stage.
- **Final statements** – The manager presenting the case (the investigating officer) may make a final statement, followed by the employee. Final statements will only contain information that has already been examined during the Hearing. Neither the manager nor the employee is entitled to introduce new or fresh evidence at this stage.
- **Adjournment during the Hearing** – The hearing may be adjourned at any time during the proceedings at the request of anyone present.
- **Deliberation of outcome** – The Hearing will adjourn whilst the Chair decides the outcome.

- **Conclusion** – The Chair will decide the outcome of the Disciplinary Hearing and wherever possible notify the employee on the day of the Hearing. The decision will however be notified in writing (or other accessible format) to the employee within five working days of the conclusion of the Hearing together with the findings and any disciplinary action. The employee must be notified of their right to appeal with the outcome.

## 9.2 Disciplinary Action

Dependent upon the findings from the Hearing, the level of disciplinary action would normally be as follows:

**No further action:** case is not found and no further action is to be taken against the employee as a result of the allegations

**Misconduct:** where misconduct has been established the disciplinary action may be:

- A written warning – remains live for no longer than 6 months from the date of issue
- A final written warning – remains live for no longer than 12 months from date of issue
- Demotion or transfer to another job as an alternative to dismissal
- Dismissal – if an earlier final written warning is still current and/or the circumstances of the current offence justify dismissal.

**Gross misconduct:** where gross misconduct has been established, dismissal, without notice will apply.

## 9.3 Appeals Against Disciplinary Action

Employees are entitled to appeal, following a disciplinary hearing, against any disciplinary action taken against them and they must be informed of their appeal rights when notified formally of the outcome of the hearing. They must appeal in writing (or other accessible format) within 10 working days from the date of the letter informing them of the outcome of the hearing or they will be deemed out of time.

## 9.4 Appeals Procedure

The employee may appeal against disciplinary action to the Chair of the Parish Council who will conduct the appeal along with one other Parish Councillor with no prior involvement in the case.

The Appeal will be considered by the Chair who may:

- Uphold the original decision
- Allow the appeal

The Appeal Hearing should be arranged to allow all parties time to review documentation submitted.

- The Chair will introduce everyone, outline the procedure for the Appeal Hearing, clarify the allegations and ensure that the employee is represented if they so wish
- **The case for the employee** – The employee will make an opening statement and present their case, calling witnesses as necessary. The manager presenting the case (usually the chair of the previous disciplinary hearing) will be able to ask questions of the employee and each witness and the Chair may ask questions of the employee and of each witness.
- **The case for the employer** – The manager presenting the case (usually the chair of the previous disciplinary hearing) will make an opening statement summarising the case and then present the case in full calling witnesses as necessary. The employee will be able to ask questions of the manager presenting the case and of each witness. The Chair may also ask questions of the manager and of each witness.
- **Re-examination** – The Chair will give both parties the opportunity to re-examine any evidence.
- **Final Statements** – The employee will make a final statement, the manager presenting the case may make a final statement. These must only contain information that has already been examined during the Appeal Hearing. Neither the manager nor the employee is entitled to introduce new or fresh evidence at this stage.
- **Adjournment during the Hearing** – the Appeal Hearing may be adjourned at any time during the proceedings at the request of anyone present.
- **Deliberation of outcome** – The Hearing will adjourn whilst the Chair decides the outcome
- **Conclusion** – the Chair will decide the outcome of the Appeal Hearing which will be notified in writing (or other accessible format to the employee within five working days of the conclusion of the Appeal Hearing.

Version No	Reviewed by	Notes/Comments	Date	Date Review Due
1	Council	Version 1 of this policy and procedure produced in line with the ACAS code of practice.	9 <sup>th</sup> October, 2019	September, 2022