

# Beaworthy Parish Council

## Disciplinary Procedure

**BEAWORTHY PARISH COUNCIL WILL SEEK PROFESSIONAL ADVICE AT EVERY STAGE OF ANY DISCIPLINARY ACTION**

This policy is based on and complies with the current ACAS Code of Practice. It also takes account of the ACAS guide on discipline and grievances at work.

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.

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## Principles

- No disciplinary action will be taken against an employee until the case has been fully investigated
- 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.
- 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.
- 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.
- An employee will have the right to appeal against any disciplinary penalty imposed.
- The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.
- The policy will be applied fairly, consistently and in accordance with the Equality Act 2010
- The Council will fully investigate the facts of each case
- The Council recognises that misconduct and unsatisfactory work performance are different issues. The disciplinary policy will also apply to work performance issues to ensure that all alleged instances of employees' underperformance are dealt with fairly and in a way that is consistent with required standards. However, the disciplinary policy will only be used to when performance management proves ineffective.

## The procedure for misconduct and gross misconduct

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

## **Disciplinary procedure.**

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.

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.

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
- Gross incompetence in the conduct of work
- Gross negligence which results in the council 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 Beaworthy Parish Council funds or credit
- Working with an external agency to provide information which would be detrimental to and cause commercial risk to the council.

Examples of unsatisfactory work performance:

The following list contains some examples of unsatisfactory work performance:

- Inadequate application of office procedures
- Inadequate IT skills
- Unsatisfactory management of staff
- Unsatisfactory communication skills

## **Informal action**

Minor misconduct will be dealt with informally usually in a confidential one-to-one meeting between the employee and Parish Council chairman. However, where the matter is more serious or informal action has not brought about the necessary improvement the following procedure will be used:

## **Formal action**

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.

## **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.

## **Hearing panels**

The Society of Local Council Clerks (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. The hearing panel would not include the Chairman of the Council and would normally be at least three members of the Parish Council.

## 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 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. If the staffing committee decides that there is a case to answer, it will appoint a staffing sub-committee of three councillors. The staffing sub-committee will appoint a Chairman from one of its members. The Investigator shall not sit on the sub-committee. No councillor with direct involvement in the matter shall be appointed to the sub-committee. The employee will be invited, in writing, to attend a disciplinary meeting. The sub-committee's letter will confirm the following:

- The names of its Chairman and other two members
- Details of the alleged misconduct, its possible consequences and the employee's statutory right to be accompanied at the meeting
- A copy of the investigation report, all the supporting evidence and a copy of the Council's disciplinary procedure
- The time and place for the meeting. The employee will be given reasonable notice of the hearing (at least 15 working days) so that he /she has sufficient time to prepare for it
- Witnesses may attend on the employee's and the Council's behalf and that both parties should inform each other of their witnesses' names at least five working days before the meeting.
- The employee and the Council will provide each other with all supporting evidence at least five working days before the meeting. If witnesses are not attending the meeting, witness statements will be submitted to the other side at least five working days before the hearing
- The employee may be accompanied by a companion - a workplace colleague, a trade union representative or a trade union official.

The disciplinary meeting will be conducted as follows:

- The Chairman will introduce the members of the sub-committee to the employee
- The Investigator will present the findings of the investigation report
- The Chairman will set out the Council's case and present supporting evidence (including any witnesses)

- The employee (or the companion) will set out his/her case and present evidence (including any witnesses)
- Any member of the sub-committee and the employee (or the companion) may question the Investigator and any witness
- The employee (or the companion) will have the opportunity to sum up his/her case
- The Chairman will provide the employee with the sub-committee's decision with reasons, in writing, within five working days of the meeting. The Chairman will also notify the employee of the right to appeal the decision

The disciplinary meeting may be adjourned to allow matters that were raised during the meeting to be investigated by the sub-committee.

## **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.

## **The right to be accompanied**

Employees may be accompanied or be represented at any disciplinary, investigatory or appeal meeting. This right is enshrined in the 1999 Employment relations Act. The companion is permitted to address such meetings, to put the employee's case and confer with the employee. The companion cannot answer questions put to the employee, address the meeting against the employee's wishes or prevent the employee from explaining his/her case. The Council will give employees reasonable notice of any meetings in this procedure. The employee must make all reasonable efforts to attend. Failure to attend any meeting may result in it going ahead and a decision being taken. An employee who does not attend a meeting will be given the opportunity to be represented and to make written submission.

If the employee's companion is not available for the proposed date of the meeting, the employee can request a postponement and can propose an alternative date that is within five working days of the original meeting date.

## **Mediation**

The Council may consider mediation at any stage of the disciplinary procedure where appropriate (for example where there have been communication breakdowns or allegations of bullying or harassment). Mediation is a dispute resolution process that requires the Council's and the employee's consent.

## **Disciplinary investigation**

Council's staffing committee will appoint an Investigator who will be responsible for undertaking the investigation - a fact-finding exercise to collect all relevant information. The Investigator will be

independent and will normally be a councillor. If the staffing committee considers that there are no councillors who are independent (for example, because they all have direct involvement in the allegations about the employee), it will appoint someone from outside the Council. The Investigator will be appointed as soon as possible after the allegations have been made. The staffing committee will inform the Investigator of the terms of reference of the investigation. The terms of reference should deal with the following:

- what the investigation is required to examine
- whether a recommendation is required
- how the findings should be presented. For example, an investigator will often be required to present the findings in the form of a report
- who the findings should be reported to and who to contact for further direction if unexpected issues arise or advice is needed.

The investigator will be asked to submit a report within 20 working days of appointment. In cases of alleged unsatisfactory performance or of allegations of minor misconduct, the appointment of an investigator may not be necessary and the Council may decide to commence disciplinary proceedings at the next stage.

The staffing committee will first notify the employee in writing of the alleged misconduct and ask him/her to attend a meeting with the Investigator. The employee will be given at least five working days' notice of the meeting with the Investigator so that he/she has reasonable time to prepare for it. The letter will explain the investigatory process and that the meeting is part of that process. The employee should be provided with a copy of the Council's disciplinary procedure. The Council will also inform the employee that when he/she meets with the Investigator, he/she will have the opportunity to comment on the allegations of misconduct.

Employees may be accompanied or represented at any investigatory meeting.

If there are other persons (eg employees, councillors, members of the public or the Council's contractors) who can provide relevant information, the Investigator should try to obtain it from them in advance of the meeting with the employee.

The Investigator has no authority to take disciplinary action. His/her role is to establish the facts of the case as quickly as possible and prepare a report that recommends to the staffing committee whether or not disciplinary action should be taken.

The Investigator's report will contain his/her recommendations and the findings on which they were based. He/she will recommend either:

- the employee has no case to answer and there should be no further action under the Council's disciplinary procedure
- the matter is not serious enough to justify further use of the disciplinary procedure and can be dealt with informally or

- the employee has a case to answer and there should be action under the Council's disciplinary procedure.

The Investigator will submit the report to the staffing committee which will decide whether further action will be taken.

Any changes to specified time limits in the Council's procedure must be agreed by the employee and the Council

Information about an employee's disciplinary matter will be restricted to those involved in the disciplinary process. A record of the reason for disciplinary action and the action taken by the Council is confidential to the employee. The employee's disciplinary records will be held by the Council in accordance with the Data Protection Act 1998

Recordings of the proceedings at any stage of the disciplinary procedure are prohibited, unless agreed as a reasonable adjustment that takes account of any employee's medical condition.

Employees will be informed in writing about the nature of the complaint against them and given the opportunity to state their case

Employees have the right to appeal against any disciplinary action. The appeal decision is final.

If an employee who is already subject to the Council's disciplinary procedure, raises a grievance, the grievance will normally be heard after the completion of the disciplinary procedure.

## **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.

### **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.

### **Appeals**

An employee who is the subject of disciplinary action will be notified of the right of appeal. His/her written notice of appeal must be received by the Council within five working days of the employee receiving written notice of the disciplinary action and must specify the grounds for appeal.

The grounds for appeal include;

- A failure by the Council to follow its disciplinary policy
- The sub-committee's decision was not supported by the evidence

- The disciplinary action was too severe in the circumstances of the case
- New evidence has come to light since the disciplinary meeting.

The Appeal will be heard by a panel of three members of the staff committee who have not previously been involved in the case. This includes the Investigator. There may be insufficient members of the staffing committee who have not previously been involved. If so, the appeal panel will be a committee of three members of the Council who may include members of the staff committee. The appeal panel will appoint a Chairman from one of its members.

The employee will be notified, in writing, within 10 working days of receipt of the notice of appeal of the time, date and place of the appeal meeting. The employee will be advised that he/she may be accompanied by a companion - a workplace colleague, a trade union representative or a trade union official.

At the appeal meeting, the Chairman will:

- Introduce the panel members to the employee.
- Explain the purpose of the meeting, which is to hear the employee's reasons for appealing against the decision of the staffing sub-committee
- Explain the action that the appeal panel may take.

The employee (or his companion) will be asked to explain the grounds for appeal.

The Chairman will inform the employee that he/she will receive the decision and the panel's reasons, in writing, within five working days of the appeal hearing.

The appeal panel may decide to uphold the decision of the staffing committee, substitute a less serious sanction or decide that no disciplinary action is necessary. If it decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file.

If an appeal against dismissal is upheld, the employee will be paid in full for the period from the date of dismissal and continuity of service will be preserved.

The appeal panel's decision is final.

## **Grievances raised during disciplinary procedure**

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.

## **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.

## **Getting it wrong**

Failure to follow the ACAS Code of Practice (available at [www.acas.org.uk](http://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.

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Signature Of Chairman	
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