

COLWICH PARISH COUNCIL



PD124 DISCIPLINARY POLICY

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DISCIPLINARY POLICY

Disciplinary Policy – PD124

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DISCIPLINARY POLICY

1 PURPOSE AND SCOPE

- 1.1** This policy is designed to help and encourage all Council officials 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 (Advisory, Conciliation and Arbitration Service) Code of Practice APR 2009.

2 PRINCIPLES

- 2.1** No disciplinary action will be taken against an official until the case has been investigated.
- 2.2** At every stage in the procedure the official 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.
- 2.3** At all formal stages the official will have the right to be accompanied by a trade union representative or another official during the disciplinary interview.
- 2.4** No official 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.
- 2.5** An official will have the right to appeal against any disciplinary penalty imposed.
- 2.6** The procedure may be implemented at any stage if the official's alleged misconduct warrants such action.

3 THE PROCEDURE FOR MISCONDUCT and GROSS MISCONDUCT

- 3.1** The following list provides examples of misconduct which will normally give rise to formal disciplinary action:
- 3.1.1** Unauthorised absence from work.
 - 3.1.2** Persistent short-term and/or frequent absences from work without good reason.
 - 3.1.3** Lateness for work or poor time keeping.
 - 3.1.4** Inappropriate or offensive clothing.
 - 3.1.5** Minor breaches of Health and Safety or other Council rules or procedures.
 - 3.1.6** Failure to perform your job to the standard expected or in line with your job description/objectives.
 - 3.1.7** Time wasting.
 - 3.1.8** Disruptive behaviour.
 - 3.1.9** Misuse of the Council's facilities (e.g. telephones, computers, email or the internet).
 - 3.1.10** Inappropriate or offensive use of social media.

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- 3.1.11** Refusal to carry out reasonable instructions.
- 3.1.12** Smoking/vaping in legislated unauthorised areas.
- 3.1.13** Failure to follow an agreed Council Procedure.

3.2 This list is not exhaustive, and offences of a similar nature will result in disciplinary action being instigated N.B. 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 Sickness Policy (PD104).

3.3 The following list provides examples of offences which are normally regarded as gross misconduct:

- 3.3.1** Theft, fraud, deliberate falsification of records, or other acts of dishonesty.
- 3.3.2** Fighting, assault on another person.
- 3.3.3** Deliberate damage to property of the Council, its officials or Councillors.
- 3.3.4** Gross incompetence in the conduct of work.
- 3.3.5** Gross negligence which results in the Council, officials or Councillors being put at risk.
- 3.3.6** Being under the influence of illegal drugs or alcohol.
- 3.3.7** 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.
- 3.3.8** Serious acts of insubordination.
- 3.3.9** Serious breach of duty to keep information of the Council, its service providers and its clients confidential.
- 3.3.10** Unauthorised entry to any Council records.
- 3.3.11** Serious breach of any Council policy.
- 3.3.12** Any action, whether committed on or off the premises, that is likely to or does bring the Council into disrepute.
- 3.3.13** Serious negligence which causes or might causes significant loss, damage or injury.
- 3.3.14** Accepting bribes or incentive payments (PD016).
- 3.3.15** Unauthorised use of Council funds or credit.

3.4 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.

4 INFORMAL ACTION

4.1 Minor misconduct will be dealt with informally usually in a confidential one-to-one meeting between the official and line manager. In the case of the Chief Officer being the individual against whom there is a complaint or allegation the matter will be handled discreetly by members of the Employment and/or Complaints Committees 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.

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5 FORMAL ACTION

- 5.1 The level of warning received for misconduct/gross misconduct will depend on how serious the Council considers the alleged actions to be and previous conduct in all the circumstances. In the event of alleged gross misconduct, the formal process may commence at Stage 4 – see 6 below.

Disciplinary Letters

- 5.2 If there is a concern about an official's conduct or behaviour then a letter will be given to the official advising him/her of the allegation(s) and reasons why this is unacceptable. The letter will invite the official to attend a meeting at which the alleged misconduct will be discussed and will inform the official 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.

Disciplinary Meetings

- 5.3 The time and location of a disciplinary meeting will be agreed with the official and it will be held in a private location with no interruptions. This will normally be without undue delay but allowing the official to prepare their case e.g. within 5 days of the letter being sent, where practicable. At the meeting the line manager (or in the case of the Chief Officer being disciplined, the Chairman of the Hearing Panel) will state the complaint against the official and go through the evidence which has been gathered. The official will also be allowed to ask questions, present evidence and call witnesses if advance notice has been given that they will do so.
- 5.4 If the official 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 official fails to attend the meeting without good reason the meeting may be held in the official's absence.

6 OUTCOMES AND PENALTIES

Stage 1 - Verbal Warning

- 6.1 In the instance of a first complaint that conduct does not meet acceptable standards, the official will normally be given a formal **VERBAL WARNING**. He or she will be advised of:
- 6.1.1 The reason for the warning.
 - 6.1.2 That a brief note of the verbal warning will be kept.
 - 6.1.3 That it is the first stage of the disciplinary procedure.
 - 6.1.4 The improvement that is required and the timescales for achieving this improvement.
 - 6.1.5 Together with a review date and any support available (where applicable).
 - 6.1.6 His or her right of appeal.

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6.1.7 That if conduct does not improve then he or she may be subject to a Stage 2 written warning.

6.2 The verbal warning will be deemed “spent” after 6 months of the improvement agreed under section 6.1.4 and, consequently, 6.1.6 will no longer apply in this instance. The warning will, however, remain within the official’s employment record.

Stage 2 - Written Warning

6.3 If the offence is serious, or if further to previous formal disciplinary action, a **WRITTEN WARNING** will be given to the official 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

6.4 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 official. 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 Chief Officer being disciplined by the Chairman 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

6.5 If conduct remains unsatisfactory and the official fails to reach the prescribed standards, or where the Council reasonably believes Gross Misconduct has occurred, **DISMISSAL** may result. Only the appropriately convened Hearing Panel can take the decision to dismiss an official. The official will be given a written statement of allegations against him or 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 official will be advised of the date on which employment will terminate. In all cases the official has a right of appeal.

6.6 In exceptional circumstances, if an offence of Gross Misconduct is extremely serious an official can be dismissed immediately without a meeting (PD126). In this situation a letter setting out reasons for dismissal would be sent to the official offering the opportunity for an appeal hearing.

7 SUSPENSION

7.1 If an official is accused of an act of gross misconduct, he or she may be suspended from work on full pay while the Council investigates the alleged offence. Only the

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appropriately convened committee, or the Chief Officer (Scheme of Delegation s.5.6 [PD126] refers), 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 will be denied. The Investigator who compiles evidence for the disciplinary hearing must play no part in the subsequent decision-making to ensure impartiality. The Council will consider the implications of such arrangements on its Hearing and Appeal Panel plans early in the disciplinary process.

8 APPEALS

8.1 The Appeals stage of the disciplinary process is part of the Code of Practice to which an official has a right. It can be exercised after any of the stage of disciplinary action for Misconduct/Poor Performance or Gross Misconduct.

8.2 An official who wishes to appeal against a disciplinary decision must inform the Chief Officer and the Chairman of the Council (or Chairman of the relevant committee) within five working days, in writing and giving reasons for the appeal. An Appeal may be raised if:

8.2.1 The official thinks the finding or penalty is unfair.

8.2.2 New evidence has come to light.

8.2.3 The official thinks that the procedure was not applied properly

8.3 Where possible, the Appeal will be heard by a separate panel of Councillors who have not been involved in the original disciplinary hearing, who will view the evidence with impartiality. The official will have the right to be accompanied by another official 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 official as soon as possible after the meeting and be confirmed in writing.

8.4 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.

9 THE RIGHT TO BE ACCOMPANIED

9.1 At each formal stage of disciplinary interview an official has the right to be accompanied and can make a reasonable request for such a person to accompany them. An official can ask any other official 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 official e.g. partner, parent, solicitor etc. the companion can address the hearing, put and sum up the official's case, respond on behalf of the worker to any views expressed at the meeting, confer with the official. The companion cannot however answer questions on the official's behalf or address the hearing if the official does not wish him/her to or prevent the official explaining their case.

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10 HEARING PANELS

- 10.1** The Council will establish a Hearing Panel (PD041) on an annual basis. In situations where individual Councillors are implicated in the dispute or have undertaken an investigatory role then they will need to be substituted as panel members.

11 NOTETAKING

- 11.1** A note-taker will 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. The Council will need to give this requirement careful consideration in order to respect official confidentiality.

12 GRIEVANCES RAISED DURING DISCIPLINARIES

- 12.1** In some circumstances when a disciplinary process has commenced an official chooses to exercise his or her right to raise an internal grievance about the employment relationship with the Council or individual Councillors. The disciplinary matters will be 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, and specialist advice will be sought if this arises.

13 CRIMINAL CHARGES OR CONVICTIONS

- 13.1** If an official 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 official's ability to undertake his or her job duties and their relationships with the Council, colleagues or customers.

14 GETTING IT WRONG

- 14.1** 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%.

SIGNED	
COUNCILLOR WENDY PLANT, PARISH COUNCIL CHAIRMAN	