

# BURSTALL PARISH COUNCIL

## DISCIPLINARY PROCEDURE

### **1. Introduction**

1.1 The aim of this Disciplinary Procedure and its associated Disciplinary Rules are to set out the standards of conduct expected of all staff and to provide a framework within which the Council can work with employees to maintain satisfactory standards of conduct and to encourage improvement where necessary. The standards of conduct expected of all employees are set out in the Disciplinary.

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

1.3 This procedure does not form part of any employee's contract of employment and it may be amended at any time. We may also vary this procedure, including any time limits, as appropriate in any case.

### **2. Who is Covered by the Procedure?**

2.1 The procedure applies to all employees regardless of length of service. It does not apply to agency workers or self-employed contractors.

### **3. What is Covered by the Procedure?**

3.1 This 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.

3.2 Minor conduct issues can often be resolved informally between you and the Chair. These discussions should be held in private and without due delay whenever there is a cause or concern. Where appropriate, a note of any such informal discussions may be placed on your personnel file but will be ignored for the purposes of any future capability hearings. In some cases, an informal verbal warning may be given, which will not form part of your disciplinary records. Formal steps will be taken under this procedure if the matter is not solved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).

3.3 You will not normally be dismissed for a first act of misconduct, unless the Council decides it amounts to misconduct or you have not yet completed your probationary period.

3.4 If you have difficulty at any stage of the procedure because of a disability, you should discuss the situation with the Chair as soon as possible.

### **4. Confidentiality**

4.1 The Council's 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.

4.2 You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure.

4.3 You will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against you, unless we believe that a witness's identity should remain confidential.

## **5. Investigations**

5.1 The purpose of an investigation is for the Council to establish a fair and balanced view of the facts relating to any disciplinary hearing. The amount 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 you and any witnesses, and/or reviewing relevant documents. The Council will appoint the Chair/Vice-Chair to investigate and will set out a provisional timetable for the investigation which will be communicated to all parties. The investigation will be thorough, impartial and objective. The Council reserves the ability to appoint an independent third party to investigate the allegations made.

5.2 Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.

5.3 You do not normally have the right to bring a companion to an investigative interview. However, the Council may allow you to bring a companion if it helps you to overcome any disability, or any difficulty in understanding English.

5.4 You must co-operate fully and promptly in any investigation. This will include informing the Council of the names of any relevant witnesses, disclosing any relevant documents to us and attending investigative interviews if required.

## **6. Criminal Charges**

6.1 Where your conduct is the subject of a criminal investigation, charge or conviction the Council will investigate the facts before deciding whether to take formal disciplinary action.

6.2 The Council will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where you are unable or have been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, the Council may have to take a decision based on the available evidence.

6.3 A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if the Council considers that it is relevant to your employment.

## **7. Suspension**

7.1 In some circumstances the Council may need to suspend you from work. The suspension will be for no longer than is necessary to investigate the allegations and the Council will confirm the arrangements to you in writing. While suspended, you should not contact any of the Council's suppliers, contractors or staff, unless you have been authorised to do so by the Chair or Vice-Chair.

7.2 Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. You will continue to receive your full salary and benefits during the period of suspension.

## **8. Notification of a Hearing**

8.1 Following any investigation, if the Council considers there are grounds for disciplinary action, you will be required to attend a disciplinary hearing. The Council will inform you in writing of the allegations against you, the basis for those allegations, and what the likely range of consequences

will be if the Council decides after the hearing that 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 you as much information as possible while maintaining confidentiality.

8.2 The Council will give you written notice of the date, time and place of the disciplinary hearing. The hearing will be held as soon as reasonably practicable, but you will be given a reasonable amount of time to prepare your case based on information the Council has given you.

### **9. The Right to be Accompanied**

9.1 You may bring a companion to any disciplinary hearing or appeal hearing under this procedure. The companion may be either a trade union representative or a colleague. You must tell the Chair/Vice-Chair who your chosen companion is in good time before the hearing.

9.2 If your choice of companion is unreasonable, we may require you to choose someone else, for example:

- a. If in the Council's opinion your companion may have a conflict of interest or may prejudice the hearing; or
- b. If your companion is unavailable at the time a hearing is scheduled and will not be available for more than five working days.

9.3 The Council, may at its discretion, allow you to bring a companion who is not a colleague or union representative (for example, a member of your family) where this will help overcome a disability, or where you have a difficulty understanding English.

### **10. Procedure at Disciplinary Hearings**

10.1 If you or your companion cannot attend the hearing you should inform the Council immediately and the Council will arrange an alternative time. You must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If you fail to attend without good reason or are persistently unable to do so (for example for health reasons), the Council may have to take a decision based on the available evidence.

10.2 The hearing will be chaired by the Chair/Vice-Chair. You may bring a companion with to the disciplinary hearing (see para. 9).

10.3 At the disciplinary hearing the Council will go through the allegations against you and the evidence that has been gathered you will be able to respond and present any evidence of your own. Your companion may make representations to the Council and ask questions but should not answer questions on your behalf. You may confer privately with your companion at any time during the hearing.

10.4 You may ask relevant witnesses to appear at the hearing, provided you give the Council sufficient advance notice to arrange their attendance. You will be the opportunity to respond to any information given by a witness. However, you will not normally be permitted to cross-examine witnesses unless, in exceptional circumstances, the Council decides that a fair hearing could not be held otherwise.

10.5 The Council may adjourn the disciplinary hearing if the Council needs to carry out any further investigations such as re-interviewing witnesses in the light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is convened.

10.6 The Council will inform you in writing of the Council's decision and the reasons for it. Where possible the Council will explain this information to you in person.

## **11. Disciplinary Penalties**

11.1 The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. The Council aims to treat all employees fairly and consistently, and a penalty imposed on another employee for similar misconduct will usually be taken into account but should not be treated as a precedent. Each case will be assessed on its own merits.

11.2 **Stage 1 – First written warning.** It will usually be appropriate for a first act of misconduct where there are no other active written warnings on your disciplinary record.

11.3 **Stage 2 – Final written warning.** It will usually be appropriate for:

- a. Misconduct where there is already an active written warning on your record; or
- b. Misconduct that the Council considers sufficiently serious to warrant a final written warning even though there are no other active warnings on your record.

11.4 **Stage 3 – Dismissal.** It will usually only be appropriate for:

- a. Any misconduct during your probationary period;
- b. Further misconduct where there is an active final written warning on your record; or
- c. Any gross misconduct regardless of whether there are active warnings on your record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal). Examples of gross misconduct are set out in our Disciplinary Rules.

11.5 **Alternative to dismissal.** In some cases, the Council may at its discretion consider alternatives to dismissal. These will usually be accompanied by a final written warning.

Examples include:

- a. A period of suspension without pay
- b. Retake training as required
- c. Loss of future pay increment.

## **12. The Effect of a Warning**

12.1 Written warnings will set out the nature of misconduct, the change of behavior required, the period for which the warning will remain active, and the likely consequences of further misconduct in that active period

12.2. A first written warning will usually remain active for six months and a final written warning will usually remain active for **12** months. Your 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.

12.3 After the active period, the warning will remain permanently on your personnel file but will be disregarded in deciding the outcome of future disciplinary proceedings.

## **13. Appeals Against Disciplinary Action**

13.1 If you feel that disciplinary action taken against you is wrong or unjust you should appeal in writing, stating your full grounds of appeal, to the Chair and/or Vice-Chair, within one week of the date on which you were informed of the decision.

13.2 If you are appealing against dismissal, the date in which dismissal takes effect will not be delayed pending the outcome of the appeal. However, if your appeal is successful you will be reinstated with no loss of continuity or pay.

13.3 If you raise any new matters in your appeal, the Council may need to carry out further investigation. If any new information comes to light the Council will provide you with a summary

including, where appropriate, copies of additional relevant documents and witness statements. You will have a reasonable opportunity to consider this information before the hearing, and you or your companion may comment on any new evidence arising during the appeal before any decision is taken.

13.4 The Council will give you written notice of the date, time and place of the appeal hearing.

13.5 The appeal hearing may be a complete re-hearing of the matter or it may 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. This will be at the Council's discretion depending on the circumstances of your case. In any event the appeal will be dealt with as impartially as possible.

13.6 Where possible, the appeal hearing will be conducted impartially by councillors forming an Appeals Committee who have not been previously involved in the case. You may bring a companion with you to the appeal hearing (see paragraph 9).

13.7 The Council may adjourn the appeal hearing if it needs to carry out further investigations in light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is convened.

13.8 Following the appeal hearing the Council may:

- a. Confirm the original decision;
- b. Revoke the original decision; or
- c. Substitute a different penalty.

13.9 The Council will inform you in writing of the final decision as soon as possible. Where possible the Council will also explain this to you in person. There will be no further right of appeal.