

Biddulph Town Council



DISCIPLINARY & GRIEVANCE POLICY

WRITTEN BY:

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INTRODUCTION

1.1 This document is designed to help Biddulph Town Council deal with disciplinary and grievance situations in the workplace. This policy does not form part of any employee's contract of employment and it may be amended at any time. The Council may also vary this policy, including any time limits, as appropriate in any case.

The definitions used by the Council are:

Disciplinary situations include misconduct and/ or poor performance.

Grievances are concerns, problems or complaints that employees raise with their employer.

This document does not apply to redundancy dismissals or the non-renewal of fixed-term contracts, on their expiry.

1.2 Fairness and transparency are promoted by developing and using rules and procedures for handling disciplinary and grievance situations. This document aims to set these rules down in writing, in order to be specific and clear.

Employees and, where appropriate, their representatives should be involved in the development of rules and procedures.

1.3 Whenever a disciplinary or grievance process is being followed it is important to deal with issues fairly. There are a number of elements to this:

- Employers and employees should raise and deal with issues **promptly** and should not unreasonably delay meetings, decisions or confirmation of those decisions.
- Employers and employees should act **consistently**.
- Employers should inform employees of the basis of the problem and give them an **opportunity** to put their case in response before any decisions are made.

OBJECTIVES OF THE POLICY

2.1 This document is designed to help and encourage all Biddulph Town 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.

2.2 PRINCIPLES

- a) No disciplinary action will be taken against an employee until the case has been fully investigated (unless in situations of alleged gross misconduct- see 3.5 below)
- b) At every formal 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.
- c) 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.
- d) 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.
- e) An employee will have the right to appeal against any disciplinary penalty imposed.

- f) The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.
- g) All grievances will be treated fairly and objectively.
- h) Employees will not be dismissed or suffer disadvantage as a result of raising a genuine grievance.
- i) If the employee has difficulty reading and writing, or if English is not their first language, any written documentation, e.g. a letter explaining the outcome of a meeting, will also be explained to them orally. Additional support that may be required at meetings will also be taken into consideration and provided as appropriate.

Any action taken as a result of a grievance will be monitored and reviewed, as appropriate, to ensure that issues are dealt with effectively.

Confidentiality

The Council aims to deal with disciplinary and grievance 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, disciplinary or grievance matter.

The Employee and anyone accompanying them (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this policy.

The employee will normally be told the names of any witnesses whose evidence is relevant to the disciplinary or grievance proceedings, unless the Council believes that a witness's identity should remain confidential.

PROVISIONS

3.1 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 rules or procedures
- Failure to perform his/her 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 from a line manager
- Use of the internet to view non-work related content, within work hours and without prior authorisation
- Smoking in unauthorised areas
- Failure to follow an agreed Council Policy or Procedure

This list is not exhaustive, and offences of a similar nature may result in disciplinary action being instigated. Persistent or frequent absence on medical grounds and long-term sickness absence will be addressed using a procedure to determine incapacity.

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, its workers or members
- Gross incompetence in the conduct of work
- Gross negligence which results in the Council, its employees or third parties being put at risk.
- Being under the influence of illegal drugs or excessive alcohol
- Bullying including but not limited to 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, Health & Safety, Confidentiality or Email and Internet
- 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 cause significant loss, damage or injury

- Accepting bribes or incentive payments from suppliers
- Unauthorised use of Council funds or credit
- Abuse of Council debit cards or supplier accounts
- Working with an external agency to provide information which would be detrimental to and cause commercial risk to the Council.

This list is not exhaustive and other offences of a similar gravity may result in disciplinary action being instigated at gross misconduct level which carries a potential penalty of dismissal.

DISCIPLINARY ACTION

3.2 INFORMAL ACTION

Minor misconduct will usually be dealt with informally, usually in a confidential one-to-one meeting between the employee and line manager. In the case of the Chief Officer being the individual against whom there is a complaint or allegation, the matter should be handled discreetly by the Chairman of the Council (i.e. Mayor) and Chairman of the Finance Strategy and Management Committee and involve an informal meeting initially.

Where the matter is more serious or informal action has not brought about the necessary improvement, the following procedure will be used.

3.3 FORMAL ACTION

The level of warning an employee may receive for misconduct/ gross misconduct will depend on how serious the Council considers the alleged actions to be and the employee's previous conduct in all the circumstances. In the event of alleged gross misconduct, the formal process may commence.

Investigations

The purpose of an investigation is to establish a fair and balanced view of the facts relating to any disciplinary allegations against an employee, before deciding whether to proceed with a 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 the employee and any witnesses, and/or reviewing relevant documents.

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.

Employees do not normally have the right to bring a companion to an investigative interview. However, we may allow you to bring a companion if it helps you to overcome any disability, or any difficulty in understanding English. Employees must co-operate fully and promptly in any investigation. This will include informing us of the names of any relevant witnesses, disclosing any relevant documents and attending investigative interviews if required.

Disciplinary Letters

If there is a concern about an employee's conduct or behaviour, then following any investigation, if the Council consider there are grounds for disciplinary action, 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 three stages below) and if invoked at Stage 3 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

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 time to prepare his/her case; where practical, within 5 days of the letter being sent.

At the meeting the manager or appropriate Councillor(s) 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 providing advance notice has been given that he/she 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.

3.4 OUTCOMES AND PENALTIES

Stage 1 - First Stage Written Warning

In the instance of a first complaint that conduct does not meet acceptable standards, the employee will normally be given a First Stage Written Warning. He or she will be advised;

- of the reason for the warning,
- that it is the first stage of the disciplinary procedure,
- of the improvement that is required and the timescales for achieving this improvement,
- of a review date and any support available (where applicable)
- that action under Stage 2 will be considered if there is no satisfactory improvement, and
- of his or her right of appeal.

Stage 2 – Final Written Warning

If there is a failure to improve and conduct or performance is still unsatisfactory, or the misconduct is sufficiently serious, a Final Written Warning will be given to the employee. This will give details of the complaint, will warn that dismissal may result if there is no satisfactory improvement over a specific given timescale and will advise of the right of appeal.

Stage 3 – Dismissal or other sanctions

If conduct is still unsatisfactory and the employee still fails to reach the prescribed standards, or where the Council reasonably believes gross misconduct has occurred, dismissal may result. 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 to appeal.

Very exceptionally, if an offence of gross misconduct is extremely serious an employee can be dismissed immediately. In this situation a letter would be sent to the employee setting out the alleged misconduct which led to the dismissal, written particulars of the Council's basis for thinking at the time of the dismissal that the employee was guilty of the alleged misconduct and written confirmation of his/her right of an appeal against the dismissal.

Time Limit for Warnings

Disciplinary warnings will remain in force for a specified period of time; this time period will be advised to the employee in writing when being advised of the warning. First Stage Written Warnings will normally be valid for a period of six months and Final Written Warnings normally for a period of twelve months. Assuming there are no further instances of misconduct or poor performance during this period the warning will no longer be 'live' and will thus be disregarded for future disciplinary purposes, except in agreed special circumstances. In a circumstance where misconduct is so serious that it cannot be realistically ignored for future disciplinary purposes, then this will be set out very clearly in writing with the warning itself.

If there are occasions where an employee's conduct is satisfactory throughout the period the warning is in force only to worsen very soon after and a pattern emerges that there is evidence of abuse, the employee's disciplinary record will then be borne in mind in deciding how long a warning should last.

3.5 SUSPENSION

If an employee is accused of an act of gross misconduct, he/she may be suspended from work on full pay while the Council investigates the alleged offence. Only the appropriately convened committee or Chief Officer has the power to suspend. This enables a swift and thorough investigation to occur. Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. 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. Whilst suspended the employee should not visit our premises or contact any of our clients, customers, suppliers, contractors or staff, unless they have been authorised to do so by the nominated person. The individual/s who compiles evidence for the disciplinary hearing should where possible play no part in the subsequent decision-making to ensure impartiality. The Council will need to consider the implications of such arrangements on its hearing and appeal panel plans early on in the disciplinary process.

3.6 APPEALS

The Appeals stage of the disciplinary process is part of the Code of Practice to which an employee has a right. It can be exercised after any of the stages of disciplinary action for misconduct/poor performance or gross misconduct.

An employee who wishes to appeal against a disciplinary decision should inform the Mayor within five working days, in writing and giving reasons for the appeal. An appeal may be raised if:

- the employee thinks the finding or penalty is unfair
- new evidence has come to light
- the employee thinks that the procedure was not applied properly.

Where possible the appeal will be heard by a separate panel of elected members who have not been involved in the original disciplinary hearing, who will view the evidence with impartiality. The employee will have the right to be accompanied by a colleague 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 employee as soon as possible after the meeting and be confirmed in writing.

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.

3.7 THE RIGHT TO BE ACCOMPANIED

At each formal stage of disciplinary interview an employee has the right to be accompanied and can make a reasonable request for such a person to accompany them. An employee can ask any other employee 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 employee e.g. partner, parent, solicitor etc. The Council may, at its discretion, allow the employee to bring a companion who is not a colleague or union representative (for example, a member of their family) if this will help overcome a disability, or if you the employee has difficulty understanding English.

The companion can address the hearing, put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee. The companion cannot however answer questions

on the employee's behalf or address the hearing if the employee does not wish him/her to, or prevent the employee explaining his/her case. If the companion is unavailable at the time a meeting is scheduled and will not be available for more than five working days afterwards, the Council may ask the employee to choose someone else.

3.8 HEARING PANELS

The Council will convene a Disciplinary/Grievance Sub-Committee as appropriate. The members of these Committees will be given the opportunity to receive training on dealing with such matters as disciplinary proceedings, grievance procedures and considering appeals.

Where practical, if an individual has undertaken an investigatory role then he/she will be substituted as panel members at any disciplinary or appeal hearings.

Where disciplinary action is taken against the Chief Officer or for some reason the Chief Officer is unable to have involvement, the Council should look to appoint an external expert to assist throughout the process.

3.9 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.

If both parties agree, the meeting can be audio recorded. The Council will need to give this requirement careful consideration in order to respect employee confidentiality.

3.10 GRIEVANCES RAISED DURING DISCIPLINARIES

Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

3.11 CRIMINAL CHARGES OR CONVICTIONS

If an employee is charged with or convicted of a criminal offence not involving the Council, 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.

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 the employee's employment.

The Council will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where the employee is unable or has 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.

GRIEVANCES

3.12 EXAMPLES OF GRIEVANCE

Examples of grievances include:

- concerns over employment terms and conditions
- contractual or statutory rights
- health and safety
- work relations, the working environment
- new working practices
- bullying and harassment
- organisational change, and
- discrimination.

3.13 FORMAL GRIEVANCE PROCEDURE

Write a Letter

The grievance should be raised with a manager/Member (as appropriate) who is not the subject of the grievance, by writing a letter detailing the nature of the grievance.

In most circumstances, the employee should write the letter to the Chief Officer. If this is not possible, the employee may write to the Chair of the Finance Strategy and Management Committee, as appropriate.

If the employee has difficulty writing the letter, e.g. if English is not their first language, they are advised to seek help from a trade union representative or colleagues.

The letter should be dated, and the employee should keep a copy for themselves.

3.14 Investigation

Upon receipt of a grievance it may be necessary to conduct an investigation. If appropriate, an investigatory meeting will be held to gather all relevant facts and evidence.

The employee will be invited to this investigatory meeting as soon as possible, in writing. It will be made clear that the purpose of the meeting is to establish the facts and that the employee may be accompanied by one colleague or trade union representative. Due consideration will be given to whether any reasonable adjustments are necessary for a person who is disabled; this includes colleagues or trade union representatives accompanying the person with a grievance.

The investigatory meeting will usually be conducted by Chief Officer. However, if the Chief Officer is the subject of the grievance, the meeting will be conducted by the Chair of the Finance Strategy and Management Committee.

The investigation will be conducted as soon as possible and will normally be completed within five working days of receiving the grievance. However, if the matter is particularly complex, this can be extended to 15 working days. If it is not possible to complete the investigation within this timeframe, the employee will receive a written explanation of the delay and when the investigation is expected to be completed.

As soon as reasonably practicable after the conclusion of the investigation (usually five working days), the employee will be notified in writing that the investigation has been completed.

3.15 Grievance Meeting

A grievance meeting will be held to discuss the grievance with the employee. The meeting will be conducted by the Chief Officer, who has not been involved in any investigation that may have been undertaken. Wherever possible, the meeting will be arranged within five working days after the grievance is

received or within five working days of the conclusion of an investigatory meeting if one has been held. The employee will be notified in writing of the date, time and location of the meeting, who will conduct the Grievance Meeting and the statutory right of employees to be accompanied at Grievance Meetings. Due consideration will be given to whether any reasonable adjustments are necessary for a person who is disabled; this includes colleagues or trade union representatives accompanying the person with a grievance.

The employee can take one colleague or trade union representative into the meeting. If the employee wishes to be accompanied in this way, they should notify the employer in advance. The employee has the right to call relevant witnesses to the meeting, but should notify the employer of their intention to do so in advance of the meeting.

The meeting will be held at a reasonable time and place. The employee, their companion and the employer should make every effort to attend the meeting. If the employee or their companion cannot attend the meeting, another meeting will be arranged to take place within five working days of the original date. This timescale may be extended by mutual agreement. The meeting will be held in private, where there will not be interruptions.

The purpose of the meeting is to establish the facts of the grievance and find a way to resolve the problem. The employee will be given the opportunity to explain their grievance and how they think it should be resolved.

Copies of meeting records will be given to the employee, including any formal minutes. However, Biddulph Town Council may withhold some information in certain circumstances, e.g. to protect a witness.

If deemed necessary, the employer may adjourn the meeting until after further investigation has been conducted. The meeting will be rescheduled as soon as is reasonably practical.

3.16 Decision and Notification

The employer will decide what action, if any, to take after the meeting. A letter will be sent to the employee, notifying them of the decision within five working days of the initial meeting. Where appropriate, the letter will set out what action the employer intends to take to resolve the grievance. Where an employee's grievance is not upheld, the reasons for this will be clearly

explained. The letter will also specify that the employee can appeal if they are not content with the decision/action taken.

3.17 APPEALS PROCEDURE

If the employee feels that their grievance has not been satisfactorily resolved, they can appeal in writing to the employer, specifying the grounds for their appeal, within five working days of receiving notification of the decision.

An Appeal Hearing will be held, wherever possible, within five working days of receiving notification of the appeal from the employee. The employee will be notified in writing of the date and location of the hearing in advance. They will also be informed that they have the right to be accompanied at the hearing. Due consideration will be given to whether any reasonable adjustments are necessary for a person who is disabled; this includes colleagues or trade union representatives accompanying the person with a grievance.

At the hearing, an Appeals Panel will consider any representations made by the employee and/or their companion, those of the investigating Manager/Member and the Manager/Member who conducted the grievance meeting and made the decision. Wherever possible the Appeals Panel will not include Members or officers who have previously been involved in the case.

The appeal will be dealt with impartially. Copies of meeting records will be given to the employee, including any formal minutes. However, Biddulph Town Council may withhold some information in certain circumstances, e.g. to protect a witness.

The outcome of the appeal will be communicated to the employee in writing within five working days of the hearing. The letter will also specify that there will be no further right of appeal.

3.18 POST-EMPLOYMENT GRIEVANCES

Wherever possible a grievance should be dealt with before an employee leaves their employment with the council. However, where an employee had already left employment and the procedure has not been commenced or completed, the employee is encouraged to attend any meetings in accordance with this procedure, so a final decision can be made. If an employee refuses to attend any meetings, the council will proceed with the meeting in their

absence and make a decision based on all the information and evidence available.

3.19 GETTING IT WRONG

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%.

Tribunals dealing with unfair dismissal claims are particularly interested in whether the employer followed a procedure and whether the employer acted fairly and reasonably. This procedure provides transparency for both the employer and employee.

WHISTLEBLOWING

3.20 Employees are often the first to realise that there may be something seriously wrong within the Council. However, they may not express their concerns because they feel that speaking up would be disloyal to their colleagues or to Council. They may also fear harassment or victimisation. In these circumstances, they may choose to ignore the issue.

3.21 This policy ensures that employees can, without fear of reprisals, raise serious concerns within the Council rather than overlooking a problem or 'blowing the whistle' outside.

The Council recognises that the decision to report a concern can be difficult to make, not least because of the fear of reprisal from those responsible for the malpractice. The Council will not tolerate harassment, bullying or victimisation and will take action to protect the employee when a concern is raised in good faith. (This does not mean that if an employee is currently the subject of disciplinary or redundancy procedures, that those procedures will be halted as a result of 'whistleblowing').

The Council will do everything possible to protect the identity of the employee who raises the concern should they not wish their name disclosed. However, the investigation process may reveal the source of the information and a statement by the employee may be required as evidence.

Some concerns may be resolved by discussion, explanation or agreed action without the need for a full investigation.

3.22 This policy encourages the employee to put their name to their allegation. Concerns expressed anonymously will be taken seriously but investigated at the discretion of Council. In exercising its discretion, the Town Council will consider:

- the seriousness of the issue raised
- the credibility of the concerns
- the likelihood of confirming the allegation from attributable sources

If an allegation is made in good faith but is not confirmed by the investigation, no action will be taken against the employee. If, however, an employee makes malicious or vexatious allegations, disciplinary action may be taken.

3.23 The action taken by Council will depend on the nature of the concern. The matters raised may:

- be investigated internally by the Chief Officer, unless allegations relate to the Chief Officer
- be referred to the Police
- be referred to the External Auditor
- form the subject of an independent enquiry

The Council will take steps to minimise, as far as is practicable, any difficulties the employee may have in dealing with the officer considering the issue or with those implicated in the matter.

RELEVANT LEGISLATION

4.1 This Policy is prepared in accordance with the dismissal and dispute resolution procedures as set out in the Employment Act 2008 and the ACAS Code of Practice March 2015.

4.2 An employee can ask any other employee 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.

4.3 Councils have a duty of care towards all their workers and liability under common law arising out of the Employment Rights Act 1996 and the Health and Safety at Work Act 1974. If an employer fails to act reasonably with regard to this duty of care by allowing bullying or harassment to continue

unchallenged an employee may decide to resign and claim 'constructive dismissal' at an Employment Tribunal.

Under the Equality Act 2010 bullying or harassment related to one of the protected characteristics covered by the Act (age, gender, marital status, sexual orientation, race, religion, belief, colour, disability) can be considered unlawful discrimination which could lead to an Employment Tribunal claim for discrimination against the corporate employer, the council and the perpetrator(s) as individual named Respondents.