

# Heighington Parish Council

## DISCIPLINARY POLICY

Document Ref: POL/DISC

Status: Approved

Version: 4.0

Date of approval: 08/01/26

Minute reference: 059/M/26

Date of next review: September 2028 (or if new legislation comes out)

## **Version Control:**

Version: 4.0

Reviewed by: Employment Committee

Details of amendments: No amendments required.

Date approved: 08/06/26

Minute: 059/M/26

Version: 3.0

Amended by: Clerk

Details of amendments: Scheduled review. Review against latest LALC template.

Date approved: 10/11/25

Minute: 141/M/25

Version: 2.0

Amended by: Clerk

Details of amendments:

- Review against latest NALC and SLCC templates, LALC advice note from Chris Moses (Personnel Advice & Solutions Ltd) and best practice documents from other councils
- Re-formatting
- Updated ACAS references

Date approved: 05/09/23

Minute: 104/M/23

Version: 1.0

Document created

Date approved: 12/10/20

Minute: 95/M/20

# **Disciplinary Policy**

## **Heighington Parish Council**

### **1. Introduction**

- 1.1. This Policy is designed to help and encourage all employees to achieve and maintain standards of conduct, attendance and job performance.
- 1.2. This Policy applies to all employees of the council.
- 1.3. The Policy will be applied fairly, consistently and in accordance with the Equality Act 2010.
- 1.4. The council recognises that misconduct and unsatisfactory work performances 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 when performance management proves ineffective.
- 1.5. This Policy is designed to help establish the facts quickly and to deal consistently with all disciplinary issues. No disciplinary action will be taken until the matter has been fully investigated. At every formal stage, employees will be advised of the nature of the complaint, be given the opportunity to state their case, and be represented or accompanied by a fellow employee or union representative of their choice.
- 1.6. Employees will not be dismissed for a first breach of discipline (except in the case of gross misconduct, when the penalty will normally be dismissal without notice and without pay in lieu of notice).
- 1.7. This policy is based on and complies with the 2015 ACAS Code of Practice<sup>1</sup>. It also takes account of the ACAS guide on discipline and grievances at work.<sup>2</sup>

### **2. Informal Procedures**

- 2.1. Informal action may often be a more satisfactory method of resolving problems than use of the formal disciplinary procedures. Wherever possible, the council will try to resolve its concerns about employees' behaviour informally first.
- 2.2. This should take the form of a discreet and informal discussion between members of the Employment Committee and the employee, with the objective of encouraging and helping

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<sup>1</sup> <https://www.acas.org.uk/acas-code-of-practice-on-disciplinary-and-grievance-procedures>

<sup>2</sup> <https://www.acas.org.uk/acas-guide-to-discipline-and-grievances-at-work>

the employee to improve. The employee should be made aware that if there is no improvement, then formal action will be taken. A file note will be kept.

2.3. These informal discussions are not part of the formal disciplinary procedure.

2.4. The option of using a mediator as an independent third party will be considered, where appropriate. This could be an internal mediator as long as they are not involved in the issue. In some cases, an external mediator may be more appropriate. This option will be on a voluntary basis and will only be used if both parties agree to it.

### 3. Formal procedures

3.1. The formal procedures apply to an employee's conduct, performance or capability.

3.2. In most cases, the formal disciplinary procedures should only be used when counselling or training has been given, and this has failed to produce the required improvements or when the seriousness of the offence warrants the formal disciplinary procedure.

3.3. Appropriate investigations should be carried out without unreasonable delay to establish the facts and whether there is a disciplinary case to answer. In some cases, this may involve holding an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, it may require the collation of evidence for use at a disciplinary hearing.

3.4. The Employment Committee will appoint an investigator responsible for undertaking a fact-finding exercise to collect all relevant information. If it is determined that there are no councillors who are independent (for example, if they all have direct involvement in the allegations about the employee), someone from outside the council will need to be appointed as investigator and they should be given clear terms of reference for the investigation (such as allegations or events to be investigated, how the findings should be presented and who to).

3.5. Before any warning, disciplinary action or decision to dismiss is taken by council, the following minimum procedures will be followed:

- The employee will be advised in writing about the alleged conduct or characteristics, unsatisfactory performance, or other circumstances, which lead the council to contemplate dismissing or taking disciplinary action against them. This letter will be signed by the chair of the Employment Committee and authorised by council.
- The council will seek external professional advice.
- The employee will be invited to a meeting of a hearing panel which will consist of the chair of the Employment Committee and two other members of that committee. The employee will be given the opportunity to state their case before any decision is taken.
- The employee will be advised that they may be accompanied by a companion of their choice at any stage of the formal proceedings. This could include a colleague or a trade union representative<sup>3</sup>.

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<sup>3</sup> This right is enshrined in the 1999 Employment Relations Act

- The employee may appeal against any dismissal or disciplinary decision, or action imposed.

3.6. Notes of the hearing panel will be taken and made available to the employee.

3.7. The formal disciplinary procedure exists for:

- Performance issues.
- Misconduct.
- Gross misconduct.

3.8. In the case of gross misconduct, the council may at its absolute discretion proceed immediately to Stage Three of the formal disciplinary procedures.

## 4. Misconduct

4.1. The following are examples of misconduct. (This is not an exhaustive list):

- Poor timekeeping.
- Unauthorised absence.
- Minor damage to council property.
- Minor breach of council rules and procedures.
- Inappropriate, disruptive or abusive behaviour.
- Failure to perform the job to the standard expected or in line with the job description.
- Refusal to follow reasonable requests or instructions.

## 5. Gross misconduct

5.1. Gross misconduct is misconduct that is so serious that it is likely to lead to dismissal without notice. It is generally any conduct which places extreme pressure on the mutual trust which exists in an employment relationship.

5.2. The following are examples of gross misconduct. (This is not an exhaustive list):

- Theft or unauthorised possession of any property belonging to the council.
  - Serious damage to council property.
  - Theft, fraud, deliberate falsification of records, or other acts of dishonesty.
  - Unauthorised access to computer records.
  - Disclosure of confidential information.
  - Serious acts of insubordination.
  - Possession of or incapacity at work because of alcohol or drugs.
  - Violent, dangerous or intimidatory conduct.
  - Acts of incitement towards or actual acts of bullying, discrimination, harassment or victimisation including on the grounds of sex, race, colour, ethnic origin, disability, sexual orientation, age, religion or belief.
  - Serious negligence which results in the council or employees being put at risk or causes or might cause significant loss, damage or injury.
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- Serious infringement of health and safety rules.
- Any action, whether committed on or off the premises, that is likely to or does bring the council into disrepute.

## 6. Formal disciplinary procedure: Stage 1 – Improvement note – Unsatisfactory performance

- 6.1. If performance does not meet acceptable standards, the employee will be informed by the chair of the Employment Committee following a disciplinary meeting (as per 3.4).
- 6.2. The employee will be issued with an improvement note which sets out the formal nature of the warning. This will set out the performance problem, the improvement required, timescales for improvement and any help that can be offered. The employee will be advised that this constitutes the first stage of the disciplinary process and that failure to improve could lead to a final written warning.
- 6.3. A copy of the improvement note will be kept on the employee's personnel file for six months but will then be considered spent subject to achievement and sustainment of satisfactory performance.
- 6.4. The employee will be informed of their right to appeal.

## 7. Formal disciplinary procedure: Stage 1 – First warning – Misconduct

- 7.1. If conduct does not meet acceptable standards, the employee will be notified by the chair of the Employment Committee or the chair of the council following a disciplinary meeting (as per 3.4).
- 7.2. The employee will be issued with a written warning setting out the nature of the misconduct and detailing the change in behaviour required. The employee will be advised that a final written warning may be considered if there is no sustained satisfactory improvement or change.
- 7.3. A copy of the warning will be kept on the employee's personnel file but will be disregarded for disciplinary purposes after a period of six months.
- 7.4. The employee will be informed of their right to appeal.

## 8. Formal disciplinary procedure: Stage 2 – Final written warning

- 8.1. If the employee has a current warning about conduct or performance, then further misconduct or unsatisfactory performance (whichever is relevant) may warrant a final written warning. It may also be warranted where a 'first offence' of misconduct is sufficiently serious but would not justify dismissal.

8.2. This will normally be given by the chair of the Employment Committee or chair of the council and confirmed to the employee in writing following a disciplinary meeting (as per 3.4).

8.3. The written warning will contain a summary of the complaint, the improvement required and the timescale. It will also specify the duration of the warning and that failure to improve may lead to Stage 3 (dismissal or some other action short of dismissal).

8.4. A copy of the warning will be kept in the employee's personnel file but will be disregarded for disciplinary purposes after twelve months subject to achievement and sustainment of satisfactory conduct or performance.

8.5. The employee will be informed of their right to appeal.

## 9. Formal disciplinary procedure: Stage 3 – Dismissal or other sanction

9.1. Dismissal may result from a serious first act of gross misconduct or from any further misconduct (of the same or another type) during the currency of an earlier warning, or failure to meet acceptable standards of performance. Such dismissal may be with or without notice or pay in lieu.

9.2. The decision to dismiss the employee will not be taken without the authority of the council. The decision to dismiss will be confirmed in a letter signed by the chair of the council.

9.3. If some sanction short of dismissal is imposed, the employee will receive details in writing of the complaint and will be warned that dismissal could result if there is not satisfactory improvement. A copy of the warning will be kept in the employee's personal file but will be disregarded for disciplinary purposes after twelve months subject to the achievement and sustainment of satisfactory conduct or performance.

9.4. The employee will be informed of their right of appeal.

## 10. Suspension during investigation

10.1. If appropriate, council may by written notice, suspend the employee for as brief a period as possible while any investigation into an allegation of gross misconduct is carried out. The decision to suspend the employee can only be taken by a properly convened meeting of the Employment Committee. Except where necessary or in exceptional circumstances, any such suspension will be limited to two weeks. The suspension itself is not seen as a disciplinary action.

10.2. If the employee is suspended the terms and conditions of employment will continue together with all their rights under the terms and conditions, including the payment of salary.

10.3. During the period of suspension, the employee will not be entitled to access any

council premises except at the prior consent of the council and subject to such conditions as the council may impose.

- 10.4. During this period the employee must not contact or attempt to contact or influence anyone connected with the investigation in any way or to discuss this matter with any other employee or councillor,
- 10.5. Whilst on suspension, the employee is required to be available during their normal hours of work in the event that the council needs to make contact.

## 11. Appeals Procedure

- 11.1. An employee may appeal against all disciplinary/dismissal decisions arising from the formal procedure.
- 11.2. The request for an appeal should be put in writing and set out the grounds of appeal, within ten working days, to the chair of the council. They will call a meeting of an appeals panel which will consist of three council members who have not been involved so far.
- 11.3. Grounds for appeal may include:
  - Failure by the council to follow its Disciplinary Policy.
  - The disciplinary 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.
- 11.4. The appeal will be heard by the appeals panel and the employee has the right to be accompanied by one relevant person or companion of their choice, which may include a trade union representative.
- 11.5. The appeal hearing will be conducted within a reasonable period of the appeal being lodged and wherever possible within five working days of the appeal being lodged.
- 11.6. Where new evidence arises during the appeal, the employee and their companion should be given the opportunity to comment before any action is taken. If necessary, the appeal will be adjourned.
- 11.7. The employee will be informed of the results of the appeal and the reasons for the decision. This will be confirmed in writing within five to ten working days, and it will be made clear, if this is the case, that the decision is final. If it is not possible to respond within this timescale, the employee will be given an explanation for the delay and advised when a response may be expected.
- 11.8. Where appropriate, the opportunity for mediation will be put forward at any stage of a disciplinary procedure.

## 12. Grievance during disciplinary action

- 12.1. Should an employee raise a grievance during the course of disciplinary procedures, it may be appropriate to suspend the disciplinary procedure for a short period until the grievance can be properly considered<sup>4</sup>. The council may consider seeking external advice as appropriate.

### 13. Records

- 13.1. Full records should be kept including details of the nature of any breach of disciplinary rules or unsatisfactory performances; the employee's response; the action taken and the reasons for it; whether an appeal was made and if so, its outcome and any subsequent developments.
- 13.2. Information about an employee's disciplinary matter will be restricted to those involved in the disciplinary process.
- 13.3. All records will be kept confidential and retained in accordance with the General Data Protection Regulation (GDPR).

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<sup>4</sup> As per ACAS guidelines