

Introduction

1. This policy is based on and complies with the 2015 ACAS Code of Practice (<http://www.acas.org.uk/index.aspx?articleid=2174>).
2. It also takes account of the ACAS guide on discipline and grievances at work: https://www.acas.org.uk/media/1043/Discipline-and-grievances-at-work-The-Acas-guide/pdf/DG_Guide_Feb_2019.pdf.
3. The policy is designed to help Council employees improve unsatisfactory conduct and performance in their job. Wherever possible, Berryfields Parish Council will try to resolve concerns about employees' behaviour informally, without starting the formal procedure set out below.
4. The policy will be applied fairly, consistently and in accordance with the Equality Act 2010.
5. This policy confirms:
 - informal coaching and supervision will be considered, where appropriate, to improve conduct and/or attendance
 - Berryfields Parish 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 consistently. However, the disciplinary policy will only be used when performance management proves ineffective (see ACAS "Performance Management": <https://www.acas.org.uk/index.aspx?articleid=6608>).
 - employees will be informed in writing about the nature of the complaint against them and given the opportunity to state their case
 - employees will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary hearing
 - employees may be accompanied or represented by a companion – a workplace colleague, a trade union representative or a trade union official – at any investigatory, disciplinary or appeal meeting
 - reasonable notice will be given for all meetings, and employees must make every effort to attend. If they cannot attend, decisions may still be made, but representation and written submissions will be permitted
 - if the employee's chosen companion is unavailable, they may request a postponement, with a new date within 7 calendar days (unless a later date is reasonable and agreed)
 - any changes to specified time limits in the procedure must be agreed by the employee and the Council
 - disciplinary information will be treated confidentially in line with GDPR
 - audio or video recordings are not permitted unless agreed as a reasonable adjustment
 - employees have the right to appeal against any disciplinary decision; the appeal decision is final

- grievances raised during disciplinary proceedings will normally be heard after the disciplinary process has concluded
- disciplinary actions may include a written warning, final written warning, or dismissal
- gross misconduct may lead to dismissal without notice
- suspension (with full pay) may be used while allegations are investigated, but it is not a disciplinary sanction
- mediation may be considered where appropriate, with the consent of all parties.

Examples of Misconduct

6. Misconduct is employee behaviour that can lead to the employer taking disciplinary action. Examples include but are not limited to:
 - unauthorised absence
 - Poor timekeeping
 - misuse of Council resources (telephone, email, internet, etc.)
 - inappropriate behaviour
 - refusal to follow reasonable instructions
 - breach of health and safety rules
 - failure to complete mandatory training or qualifications without good reason.

Examples of Gross Misconduct

7. Gross misconduct is misconduct that is so serious that it is likely to lead to dismissal without notice.
 - bullying, discrimination, or harassment
 - incapacity at work due to alcohol or drugs
 - violent behaviour
 - fraud or theft
 - gross negligence
 - gross insubordination
 - serious breaches of Council policies and procedures (e.g. Health & Safety, Equality & Diversity, Data Protection, IT usage)
 - serious and deliberate damage to property
 - accessing pornographic, obscene, or offensive material via internet/email
 - disclosure of confidential information.

Suspension

8. If allegations of gross or serious misconduct are made, Berryfields Parish Council may suspend the employee while investigations are carried out. Suspension will be on full pay and is not a determination of guilt.
9. While suspended, employees must remain available during normal working hours, avoid contact with anyone connected to the investigation, and not attend the workplace except as agreed.
10. The Council will arrange access to information/documents needed for the employee's response.

Examples of unsatisfactory work performance

11. Examples include, but are not limited to:

- inadequate application of management instructions/office procedures
- inadequate IT skills
- unsatisfactory management of staff
- unsatisfactory communication skills.

The Procedure

12. Preliminary enquiries. Berryfields Parish Council may make preliminary enquiries to establish the basic facts of what has happened in order to understand whether there may be a case to answer under the disciplinary procedure.
13. If the employee's manager believes there may be a disciplinary case to answer, the council may initiate a more detailed investigation undertaken to establish the facts of a situation or to establish the perspective of others who may have witnessed misconduct.
14. Informal Procedures. Where minor concerns about conduct become apparent, it is the manager's responsibility to raise this with the employee and clarify the improvements required. A file note will be made and kept by the manager. The informal discussions are not part of the formal disciplinary procedure. If the conduct fails to improve, or if further matters of conduct become apparent, the manager may decide to formalise the discussions and invite the employee to a first stage disciplinary hearing.

Disciplinary Investigation

15. A formal disciplinary investigation may sometimes be required to establish the facts and whether there is a disciplinary case to answer.
16. If a formal disciplinary investigation is required, the Council will appoint an Investigator who will be responsible for undertaking a fact-finding exercise to collect all relevant information. The Investigator will be independent and will normally be a councillor. If the Council 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 Council will inform the Investigator of the terms of reference of the investigation. The terms of reference should specify:
- the allegations or events that 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 written report
 - who the findings should be reported to and who to contact for further direction if unexpected issues arise or advice is needed.
17. The Investigator will be asked to submit their findings usually within 35 Calendar days of appointment where possible. In cases of alleged unsatisfactory performance or of allegations of minor misconduct, the appointment of an investigator may not be necessary and Berryfields Parish Council may decide to commence disciplinary proceedings at the next stage - the disciplinary meeting (see paragraph 22).

18. The Council will notify the employee in writing of the alleged misconduct and details of the person undertaking the investigation. The employee may be asked to meet an investigator as part of the disciplinary investigation. The employee will be given sufficient notice of the meeting with the Investigator so that they have reasonable time to prepare for it. The letter will explain the investigatory process and that the meeting is part of that process. The employee will be provided with a copy of Berryfields Parish Council's disciplinary procedure. The Council will also inform the employee that when they meet with the Investigator, they will have the opportunity to comment on the allegations of misconduct.
19. Employees may be accompanied or represented by a workplace colleague, a trade union representative or a trade union official at any investigatory meeting.
20. If there are other persons (e.g. 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.
21. The Investigator has no authority to take disciplinary action. Their role is to establish the facts of the case as quickly as possible and prepare a report that recommends to the Council whether or not disciplinary action should be considered under the policy.
22. The Investigator's report will contain their recommendations and the findings on which they were based. They 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 a formal hearing should be convened under the Council's disciplinary procedure.
23. The Investigator will submit the report to the Council which will decide whether further action will be taken.
24. If Berryfields Parish Council decides that it will not take disciplinary action, it may consider whether mediation would be appropriate in the circumstances.

The Disciplinary Meeting

25. If the Council decides that there is a case to answer, it will appoint a staffing sub-committee of 3 councillors, to formally hear the allegations. The staffing sub-committee will appoint a Chairman from one of its members. The Investigator shall not sit on the sub-committee.
26. 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 information provided to the sub-committee which may include the investigation report, 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 so that they have sufficient time to prepare for it

- that 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 2 working days before the meeting
 - that the employee may be accompanied by a companion - a workplace colleague, a trade union representative or a trade union official.
27. The purpose of the disciplinary meeting hearing is for the allegations to be put to the employee and then for the employee to give their perspective. It will be conducted as follows:
- the Chairman will introduce the members of the sub-committee to the employee and explain the arrangements for the hearing
 - the Chairman will set out the allegations and invite the Investigator to present the findings of the investigation report (if there has been a previous investigation)
 - the Chairman will invite the employee to present their account
 - the employee (or the companion) will set out their case and present evidence (including any witnesses and/or witness statements)
 - any member of the sub-committee and the employee (or the companion) may question the Investigator and any witness
 - the employee (or companion) will have the opportunity to sum up.
28. The Chairman will provide the employee with the sub-committee's decision with reasons, in writing, within 7 calendar days of the meeting. The Chairman will also notify the employee of the right to appeal the decision.
29. The disciplinary meeting may be adjourned to allow matters that were raised during the meeting to be further investigated by the sub-committee.

Disciplinary action

30. If the sub-committee decides that there should be disciplinary action, it may be any of the following:

First written warning

31. If the employee's conduct has fallen beneath acceptable standards, a first written warning will be issued. A first written warning will set out:
- the reason for the written warning, the improvement required (if appropriate) and the time period for improvement
 - that further misconduct/failure to improve will result in more serious disciplinary action
 - the employee's right of appeal
 - that a note confirming the written warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for a specified period of time (e.g. 12 months).

Final written warning

32. If the offence is sufficiently serious, or if there is further misconduct or a failure to improve sufficiently during the currency of a prior warning, the employee will be given a final written warning. A final written warning will set out:

- the reason for the final written warning, the improvement required (if appropriate) and the time period for improvement
- that further misconduct/failure to improve will result in more serious disciplinary action up to and including dismissal
- the employee's right of appeal
- that a note confirming the final written warning will be placed on the employee's personnel file, that a copy will be provided to the employee and that the warning will remain in force for a specified period of time (e.g. 12 months).

Dismissal

33. Berryfields Parish Council may dismiss:

- for gross misconduct
- if there is no improvement within the specified time period, in the conduct which has been the subject of a final written warning
- if another instance of misconduct has occurred and a final written warning has already been issued and remains in force.

34. Berryfields Parish Council will consider very carefully a decision to dismiss. If an employee is dismissed, they will receive a written statement of the reasons for their dismissal, the date on which the employment will end and details of their right of appeal. If the sub-committee decides to take no disciplinary action, no record of the matter will be retained on the employee's personnel file. Action taken as a result of the disciplinary meeting will remain in force unless it is modified as a result of an appeal.

The Appeal

35. An employee who is the subject of disciplinary action will be notified of the right of appeal. Their written notice of appeal must be received by the Council within 7 calendar days of the employee receiving written notice of the disciplinary action and must specify the grounds for appeal.

36. The grounds for appeal include;

- a failure by the Council to follow its disciplinary policy
- the sub-committee's 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.

37. Where possible, the appeal will be heard by a panel of 3 members of the Council who have not previously been involved in the case. This includes the Investigator. There may be insufficient members of the Council who have not previously been involved. If so, the appeal panel will be a committee of 3 members of the Council who may include members of the staff committee. The appeal panel will appoint a Chairman from one of its members.

38. The employee will be notified, in writing, within 14 calendar days of receipt of the notice of appeal of the time, date and place of the appeal meeting. The employee will be advised that they may be accompanied by a companion - a workplace colleague, a trade union representative or a trade union official.

39. 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 disciplinary decision
- explain the action that the appeal panel may take.

40. The employee (or companion) will be asked to explain the grounds for appeal.
41. The Chairman will inform the employee that they will receive the decision and the panel's reasons, in writing, usually within five working days of the appeal hearing.
42. The appeal panel may decide to uphold the disciplinary decision of the Council, 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.
43. 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.
44. The appeal panel's decision is final.

Document History

Approved by Parish Council

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(version 1)

Supersedes: Disciplinary & Grievance Procedure, September 2016, version 1