



# Stratfield Mortimer Parish Council

## Disciplinary Policy

Adopted by the Finance and General Purposes Committee of Stratfield Mortimer Parish Council on 5 September 2023.

Note: This Policy should be used in conjunction with the Council's Dignity at Work, Grievance, and Performance Management Policies, and the Councillors' Code of Conduct.

### Introduction

#### 1 Statement

This Policy is based on and complies with the 2015 ACAS Code of Practice and takes account of the ACAS guide on discipline and grievances at work. This Policy is designed to help Stratfield Mortimer Parish Council employees improve unsatisfactory conduct and performance in their job. Wherever possible, the Council will try to resolve its concerns about employees' behaviour informally, without starting the formal procedure set out below.

This Policy will be applied fairly, consistently and in accordance with the Equality Act 2010.

#### 2 This Policy confirms that:

- the Council will fully investigate the facts of each case;
- the Council recognises that misconduct and unsatisfactory work performance are different issues (but this Disciplinary Policy will apply if efforts to resolve unsatisfactory work performance cannot be resolved in accordance with the Performance Management Policy);
- employees will be informed in writing about the nature of the complaint against them and given the opportunity to state their case;
- employees may be accompanied or represented by a workplace colleague, a friend, a trade union representative, or a trade union official at any disciplinary, investigatory or appeal meeting - the companion is permitted to address such meetings, to put the employee's case, and to confer with the employee, but cannot answer questions put to the employee, address the meeting against the employee's wishes, or prevent the employee from explaining their case;
- the Council will give employees reasonable notice of any meetings in this procedure – the employee must make all reasonable efforts to attend but if they fail to do so a further meeting will be arranged, however a failure to attend a second meeting may result in it going ahead and a decision being taken in the employee's absence;
- if the employee's companion is not available for the proposed date of the meeting, the employee can request a postponement and can propose an alternative date

that is within 5 working days of the original meeting date;

- any changes to specified time limits in the Council's procedure must be agreed by the employee and the Council;
- information about an employee's disciplinary matter will be restricted to those involved in the disciplinary process, and any record of the reason for disciplinary action and the action taken by the Council is confidential to the employee - the employee's disciplinary records will be held by the Council in accordance with the General Data Protection Regulations 2018;
- recordings of the proceedings at any stage of the disciplinary procedure are prohibited, unless agreed as a reasonable adjustment that takes account of an employee's medical condition;
- employees have the right to appeal against any disciplinary action - the appeal decision is final;
- if an employee who is already subject to the Council's disciplinary procedure raises a grievance, the grievance will normally be heard after the completion of the disciplinary procedure;
- disciplinary action taken by the Council can include an oral warning, written warning, final written warning, or dismissal;
- except for gross misconduct when an employee may be dismissed without notice, the Council will not dismiss an employee on the first occasion that it decides there has been misconduct;
- if an employee is suspended following allegations of misconduct, it will be on full pay and only for such time as is necessary - suspension is not a disciplinary sanction and the Council will write to the employee to confirm any period of suspension and the reasons for it.

## Misconduct definitions

### 3 Examples of minor misconduct

Misconduct is employee behaviour that can lead to the employer taking disciplinary action. The following list contains some examples of misconduct:

- unauthorised absence;
- poor timekeeping;
- misuse of the Council's resources and facilities including telephone, email, and internet.

### 4 Examples of serious misconduct

Serious misconduct is employee behaviour that can lead to a written or final written

warning. The following list contains some examples of serious misconduct:

- inappropriate behaviour;
- refusal to follow reasonable instructions;
- sustained poor timekeeping;
- breach of health and safety rules.

## 5 Examples of gross misconduct

Gross misconduct is misconduct that is so serious that it is likely to lead to dismissal without notice. The following list contains some examples of gross misconduct:

- bullying, discrimination and harassment;
- incapacity at work because of alcohol or drugs;
- violent behaviour;
- fraud or theft;
- gross negligence;
- gross insubordination;
- serious breaches of health and safety rules;
- deliberate damage to property;
- use of the internet or email to access pornographic, obscene, or offensive material;
- disclosure of confidential information;
- criminal behaviour;
- bringing the Council into disrepute.

## Process for dealing with disciplinary issues

### 6 Disciplinary investigation

The Council's Personnel Sub-Committee will, normally within 10 working days of the employee being informed of a complaint, appoint an Investigator who will be responsible for undertaking the investigation - a fact-finding exercise to collect all relevant information. The Investigator will be independent and will normally be a Councillor. If the Personnel Sub-Committee 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 Personnel Sub-Committee will inform the Investigator of the terms of reference of the investigation. The terms of reference should deal with the following:

- what 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 report;
- to whom the findings should be reported, and who to contact for further direction

if unexpected issues arise or advice is needed.

The Investigator will be asked to submit a report within 20 working days of appointment.

In cases of alleged unsatisfactory performance or of allegations of minor misconduct, the appointment of an Investigator may not be necessary, and the Personnel Sub-Committee may decide to commence disciplinary proceedings at the next stage.

The Personnel Sub-Committee will first notify the employee in writing of the alleged misconduct and ask them to attend a meeting with the Investigator. The employee will be given at least 5 working days' 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 should be provided with a copy of this Policy. 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.

Employees may be accompanied or represented by a workplace colleague, a friend, a trade union representative, or a trade union official at any investigatory meeting.

If there are other people (for example 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.

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 Personnel Sub-Committee whether disciplinary action is necessary.

The Investigator's report will contain their recommendations and the findings on which they were based. They will recommend either that:

- 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 there should be action under the Council's disciplinary procedure.

The Investigator will submit the report to the Personnel Sub-Committee which will decide within 10 working days whether further action will be taken.

## 7 The Disciplinary Meeting

If the Personnel Sub-Committee decides that there is a case to answer, it will within 5 working days appoint a Disciplinary Panel of 3 Councillors. The Panel will appoint a Panel Chairman from one of its members. The Investigator shall not sit on the Panel. No Councillor with direct involvement in the matter shall be appointed to the Panel.

The employee will be invited, in writing, to attend a Disciplinary Meeting, to be held within 20 working days.

The Panel letter will:

- give the names of the Panel members;
- give details of the alleged misconduct, its possible consequences and the

employee's statutory right to be accompanied at the meeting;

- enclose a copy of the investigation report, all the supporting evidence and a copy of this Policy;
- give the time and place for the meeting - the employee will be given reasonable notice of the hearing (at least 15 working days) so that they have sufficient time to prepare for it;
- explain 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 5 working days before the meeting;
- require that the employee and the Council will provide each other with all supporting evidence at least 5 working days before the meeting - if witnesses are not attending the meeting, witness statements will be submitted to the other side at least 5 working days before the hearing;
- explain that the employee may be accompanied by a companion - a workplace colleague, a friend, a trade union representative, or a trade union official.

The Disciplinary Meeting will be conducted as follows:

- the Panel Chairman will introduce the members of the Disciplinary Panel to the employee;
- the Investigator will present the findings of the investigation report;
- the employee (or the companion) will set out their case and present evidence (including any witnesses);
- any member of the Disciplinary Panel and the employee (or the companion) may question the Investigator and any witness;
- the employee (or the companion) will have the opportunity to sum up their case;
- the Disciplinary Meeting may be adjourned to allow matters that were raised during the meeting to be investigated by the Disciplinary Panel.

Following the Disciplinary Meeting the Panel Chairman will provide the employee with the Disciplinary Panel's decision with reasons, in writing, within 5 working days of the meeting. The Panel Chairman will also notify the employee of the right to appeal the decision.

## 8 Disciplinary action

If the Disciplinary Panel decides that there should be disciplinary action, it may be any of the following:

### 8.1 Oral warning

An oral warning is issued for most first instances of minor misconduct. The Council will notify the employee:

- of the reason for the warning, the improvement required (if appropriate) and the period for improvement;
- that further misconduct/failure to improve will result in more serious disciplinary action;

- of the right to appeal;
- that a note confirming the oral 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 6 months.

## 8.2 Written warning

If there is a repetition of earlier misconduct which resulted in an oral warning, or for different and more serious misconduct, the employee will normally be given a written warning. A written warning will set out:

- the reason for the written warning, the improvement required (if appropriate) and the 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 12 months.

## 8.3 Final written warning

If there is further misconduct during the period of a written warning or if the misconduct is sufficiently serious, 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 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 18 months.

## 8.4 Dismissal

The Council may dismiss:

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

The 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 Disciplinary Panel decides to take no disciplinary action, no record of the matter will be retained in the employee's personnel file. Action imposed because

of the Disciplinary Meeting will remain in force unless and until it is modified because of an appeal.

## 9 Appeal

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 5 working days of the employee receiving written notice of the disciplinary action and must specify the grounds for appeal.

The grounds for appeal are that:

- the Council failed to follow this Policy; or
- the Disciplinary Panel decision was not supported by the evidence; or
- the disciplinary action was too severe in the circumstances of the case; or
- new evidence has become known since the Disciplinary Meeting.

The Appeal will be heard by a panel of 3 members of the Council who have not previously been involved in the case (including the Investigator). The Appeal Panel will appoint a Panel Chairman from one of its members.

The employee will be notified, in writing, within 10 working 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.

At the Appeal Meeting, the Panel Chairman will:

- introduce the Appeal Panel members to the employee;
- explain the purpose of the meeting, which is to hear the employee's reasons for appealing against the decision of the Disciplinary Panel;
- explain the action that the Appeal Panel may take.

The employee (or his companion) will be asked to explain the grounds for appeal.

The Panel Chairman will inform the employee that they will receive the decision and the Appeal Panel's reasons, in writing, within 5 working days of the appeal hearing.

The Appeal Panel may decide to uphold the decision of the Disciplinary Panel, 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 in the employee's personnel file.

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.

The Appeal Panel's decision is final.

Document control

Version	Date	Editor	Changes	Approved	
				On	By
0.1	29/06/23	H Geary	Review, reformatted and minor amendments		
0.2	29/08/23	G Bridgman	Further formatting and amendments		
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