# Ockbrook and Borrowash Parish Council

## DISCIPLINARY POLICY.

### INTRODUCTION.

This procedure is based on and complies with the 2017 ACAS Code of Practice <http://www.acas.org.uk/media/pdf/9/g/Discipline-and-grievances-Acas-guide.pdf>

This policy is designed to help 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.

The policy will be applied fairly, consistently and in accordance with the Equality Act 2010.

This procedure confirms:

* Informal coaching and supervision will be considered, where appropriate, to improve conduct and/or attendance.
* The 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 in a way that is consistent with required standards. However, the disciplinary policy will only be used to when performance management proves ineffective. For more information see the ACAS publication “How to manage performance” at: <http://www.acas.org.uk/index.aspx?articleid=2927>
* 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 trade union representative or a work colleague at any disciplinary or investigatory meeting. The companion is permitted to address such meetings, to put the employee's case and confer with the employee. The companion cannot answer questions put to the employee, address the meeting against the employee’s wishes or prevent the employee from explaining his/her case.
* The Council will give employees reasonable notice of any meetings in this procedure. Employee must make all reasonable efforts to attend. Failure to attend any meeting may result in it going ahead and a decision being taken. An employee who does not attend a meeting will be given the opportunity to be represented and to make written submissions.
* 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 five working days of the original meeting date unless it is unreasonable not to propose a later 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. A 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 Regulation (GDPR).
* 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.
* This procedure may be implemented at any stage if the employees alleged misconduct warrants this.
* 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. The Council will write to the employee to confirm any period of suspension and the reasons for it.
* The Council may consider mediation at any stage of the disciplinary procedure where appropriate (for example where there have been communication breakdowns or allegations of bullying or harassment). Mediation is a dispute resolution process that requires the Council’s and the employee’s consent.

### EXAMPLES OF MISCONDUCT.

Misconduct is employee behaviour that can lead to the employer taking disciplinary action. The following list contains some examples of misconduct: The list is not exhaustive.

* Unauthorised absence
* Poor timekeeping
* Misuse of the Councils resources and facilities including telephone, email and internet.
* Inappropriate behaviour
* Refusal to follow reasonable instructions.
* Breach of health and safety rules.

### 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: the list is not exhaustive.

* Bullying, discrimination and harassment
* Incapacity at work because of alcohol or drugs
* Violent behaviour
* Fraud or theft
* Gross negligence
* Gross insubordination
* Serious breaches of Council policies and procedures e.g. the Health and Safety Policy, Equality and Diversity Policy, Data Protection Policy and any policies regarding the use of information technology.
* Serious and deliberate damage to property
* Use of the internet or email to access pornographic, obscene or offensive material.
* Disclosure of confidential information.

### SUSPENSION.

If allegations of gross misconduct or serious misconduct are made, the Council may suspend the employee while further investigations are carried out. Suspension will be on full pay. Suspension does not imply any determination of guilt or innocence, as it is merely a measure to enable further investigation.

While on suspension the employee is required to be available during normal hours of work in the event that the Council needs to make contact. 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.

The employee must not attend work. The Council will make arrangements for the employee to access any information or documents required to respond to any allegations.

### EXAMPLES OF UNSATISFACTORY WORK PERFORMANCE.

The following list contains some examples of unsatisfactory work performance: the list is not exhaustive.

* Inadequate application of management instructions/office procedure
* Inadequate IT skills
* Unsatisfactory management of staff
* Unsatisfactory communication skills

### THE PROCEDURE.

#### **Preliminary Enquiries.**

The 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.

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 the situation or to establish the perspective of others who may have witnessed misconduct.

#### **Informal Procedures.**

Where minor concerns about conduct become apparent, it is the managers 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.

A formal disciplinary investigation may sometimes be required to establish the facts and whether there is a disciplinary case to answer.

If a formal disciplinary investigation is required, the Council’s HR Committee 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 HR 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 Investigator will be appointed as soon as possible after the allegations have been made. The HR Committee 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 needed.

The Investigator will be asked to submit a report within 20 working 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 the Council may decide to commence disciplinary proceedings at the next stage.

The HR Committee 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 at least five working days’ notice of the meeting with the Investigator so that he/she has 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 the Council’s disciplinary procedure. The Council will also inform the employee that when he/she meets with the Investigator, he/she will have the opportunity to comment on the allegations of misconduct.

Employees may be accompanied or represented by a trade union representative or a work colleague at any investigatory meeting.

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.

The Investigator has no authority to take disciplinary action. His/her/their role is to establish the facts of the case as quickly as possible and prepare a report that recommends to the HR Committee whether or not disciplinary action should be considered under the policy.

The Investigator’s report will contain his/her/their recommendations and the findings on which they were based. He/she/they will recommend either:

* + The employee has no case to answer and there should 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 HR Committee which will decide whether further action will be taken.

If the Council decides that it will not take disciplinary action, it may consider whether mediation would be appropriate in the circumstances.

### THE DISCIPLINARY MEETING.

The Investigator shall not sit on the HR Committee, neither should any Councillors with direct involvement sit on the HR Committee. If the HR Committee decides that there is a case to answer, the employee will be invited, in writing, to attend a disciplinary meeting. The committee’s letter will confirm the following:

* The names of its Chair 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 investigation report, all the 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 (at least 15 working days) so that he /she/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 five working days before the meeting.
* That the employee and the Council will provide each other with all supporting evidence at least five working days before the meeting. If witnesses are not attending the meeting, witness statements will be submitted to the other side at least five working days before the hearing.
* That the employee may be accompanied by a companion, either a trade union representative or a work colleague

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 Chair will introduce the members of the personnel committee to the employee and explain the arrangements for the hearing.
* The Chair will invite the Investigator to present the findings of the investigation report.
* The Chair will set out the council’s case and present supporting evidence (including any witnesses).
* The Chair will invite the employee to present their account.
* The employee (or the companion) will set out his/her/their case and present evidence (including any witnesses and/or witness statements).
* Any member of the HR Committee 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 his/her/their case.
* The Chair will provide the employee with the HR Committee’s decision with reasons, in writing, within five working days of the meeting. The Chair will also notify the employee of the right to appeal against the decision.
* The disciplinary meeting may be adjourned to allow matters that were raised during the meeting to be investigated by the sub-committee.

### DISCIPLINARY ACTION.

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

#### **Stage 1 - Oral Warning**

In the instance of a first complaint that conduct does not meet acceptable standards, the employee will normally be given a formal ORAL WARNING. He or she will be advised of:

* The reason for the warning,
* That it is the first stage of the disciplinary procedure,
* The improvement that is required and the timescales for achieving this improvement,
* Together with a review date and any support available (where applicable) and
* His/her/their right of appeal.
* A brief note of the oral warning will be kept but it will be spent after 6 months, subject to satisfactory conduct.

#### **Stage 2 - Written Warning**

If the offence is a serious one, or if further to previous formal disciplinary action, a WRITTEN WARNING will be given to the employee by the Chairman of the Personnel Committee. This will set out:

* The details of the complaint
* The improvement required and the timescale.
* It will warn that action under Stage 3 will be considered if there is no satisfactory improvement and will advise of the right of appeal.
* A copy of this written warning will be kept on file, but it will be disregarded for disciplinary purposes after 12 months subject to satisfactory conduct.

#### **Stage 3 – Final Written Warning**

If there is still a failure to improve and conduct or performance is still unsatisfactory, or the misconduct is sufficiently serious, a FINAL WRITTEN WARNING will normally be given to the employee. This will set out:

* Details of the complaint
* Will warn that dismissal will result if there is no satisfactory improvement.
* Will advise of the right of appeal.
* A copy of this final written warning will be kept by the Line Manager (or in the case of the Clerk being disciplined by the Chair of the Hearing Panel) but it will be spent after 12 months (in exceptional cases the period may be longer) subject to satisfactory conduct.

#### **Stage 4 – Dismissal or other sanctions**

If conduct is still unsatisfactory and the employee still fails to reach the prescribed standards, or where the Society reasonably believes Gross Misconduct has occurred, DISMISSAL may result. Only the appropriately convened hearing panel can take the decision to dismiss an employee.

* The employee will be given a written statement of allegations against him/her.
* Invited to a meeting.
* 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 of appeal.

Very exceptionally, if an offence of Gross Misconduct is extremely serious an employee can be dismissed immediately without a meeting. In this situation a letter setting out reasons for dismissal would be sent to the employee offering the opportunity for an appeal hearing.

### THE APPEAL.

An employee who is the subject of disciplinary action will be notified of the right of appeal. His/her/their written notice of appeal must be received by the Council within five working days of the employee receiving written notice of the disciplinary action and must specify the grounds for appeal.

The grounds for appeal include,

* + A failure by the Council to follow its disciplinary policy.
	+ The sub-committee’s 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.

Where possible, the appeal will be heard by a panel of three members of the HR Committee who have not previously been involved in the case. This includes the Investigator. There may be insufficient members of the Personnel committee who have not previously been involved. If so, the appeal panel will be a committee of three members of the council who may include members of the staff committee. The appeal panel will appoint a Chair 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 he/she/they may be accompanied by a companion, either a trade union representative or a work colleague.
* At the appeal meeting, the Chair will:
	+ introduce the panel members to the employee.
	+ explain the purpose of the meeting, which is to hear the employees’ reasons for appealing against the decision of the Personnel sub-committee.
	+ explain the action that the appeal panel may take.
* The employee (or his/her/their companion) will be asked to explain the grounds for appeal.
* The Chair will inform the employee that he/she/they will receive the decision and the panel’s reasons, in writing, within five working days of the appeal hearing.
* The appeal panel may decide to uphold the decision of the HR Committee, 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.
* 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.