

Disciplinary Policy & Procedures

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References	Equality Act 2010, Advisory, Conciliation and Arbitration Service (ACAS), Employment legislation
Related Policies	Code of Conduct, Standing Orders, Financial Regulations, Data Protection Policy, Grievance Policy and procedures

Version Control

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V1	21/11/2023	126/23	12/12/2023	Q4 2027

1. Introduction

Boyatt Wood Parish Council (BWPC) encourage all staff to attain and maintain a minimum of acceptable standard of conduct and performance.

Unfortunately, situations may arise where disciplinary action needs to be taken due to poor performance and/or misconduct. Any action taken against an employee must be reasonable, justified, fair, and transparent. An employee could face disciplinary proceedings for their actions outside of work.

The policy complies with the Advisory, Conciliation and Arbitration Service (ACAS)¹ Code of Practice on disciplinary and grievance procedures and in accordance with the Equality Act 2010 and Employment legislation.

2. Aims and Scope

This Policy and Procedure apply to all paid employees of BWPC and is designed to encourage all members of staff to improve unacceptable behaviour. BWPC expect high standards of conduct and performance at all times.

The aims are to provide a framework to manage issues which arise relating to an employee's behaviour. This is to ensure a systematic, fair and consistent approach is applied.

All Disciplinary actions will be dealt with promptly and records retained on a confidential basis.

3. Duty of Care

Employers have a duty of care to their employees and requires the employer to take reasonable steps to ensure employees health, safety and wellbeing. This duty is wide ranging and employers should consider how they can provide support to their employees, throughout their employment to minimise the risk of this happening.

The disciplinary process can be stressful and it is important that employers consider regular communication with the employee regarding the status of their disciplinary case.

4. Conduct and Capability

There is a scale of misconduct from minor to major which can lead to disciplinary action. Also underperforming in the role can lead to disciplinary action. The below non-exhaustive list provides examples of unacceptable behaviour.

4.1 Misconduct

- Minor breach of council rules, policies and procedures;
- Minor damage to council property;
- Unsatisfactory attendance and/or poor timekeeping;
- Unauthorised absence;
- Refusal to follow reasonable instructions issued by a manager or supervisor;

4.2 Gross Misconduct

Gross misconduct is conduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and BWPC.

¹ <https://www.acas.org.uk/disciplinary-and-grievance-procedures>

If, on completion of the investigation and the full disciplinary procedure, the conclusion is that gross misconduct has occurred, the result will normally be summary dismissal, i.e. dismissal without notice or payment in lieu of notice.

- Any act which constitutes a criminal offence
- Any act or attempted act of physical violence or abusive behaviour towards people;
- Deliberate and serious damage to the Council's property or name;
- Unauthorised use of the Council's computer systems including downloading inappropriate material
- Any serious act of unreasonable refusal to carry out reasonable requests;
- Any form of unlawful discrimination, victimisation, harassment and bullying
- Any act likely to bring the Council into serious disrepute, whether during or outside of working hours;
- Serious incapability at work brought on by alcohol or drugs
- Serious neglect of duties or incompetence including causing loss, damage or injury through negligence;

4.3 Capability

- Inadequate application of management instructions/procedures
- Inadequate IT skills as per job specification
- Unsatisfactory management of staff
- Unsatisfactory communication skills.

5. Mediation/Independent third party

Mediation is a process of conflict resolution between two or more individuals facilitated by a neutral third party or independent trained mediator. The purpose of mediation is to allow the individuals concerned an opportunity to explore issues of conflict with the aim of reaching a mutually agreeable solution. There needs to be willingness on the part of all parties concerned to enter into mediation on a voluntary basis. No-one can be forced into the mediation process, and the outcome will be non-binding. It can be used at any stage during the Disciplinary process.

6. Records

6.1 In the interest of fairness, a record will be kept by BWPC of all confirmed misconduct and capability reports which will be agreed and signed by all parties concerned and retained on the employee's personnel file. Records will include but not limited to

- The nature of the alleged misconduct/performance
- The reasons why the conduct/performance is unacceptable.
- Findings of investigations
- What was decided and actions taken
- The reason for the actions
- Personal Improvement Plan (PIP) and timescales
- Date of review of PIP
- Expiry date of warning
- Details of Appeal and outcome
- Any subsequent developments

- 6.2** Records of meetings and hearings whether written or recorded may be required by and Employment Tribunal and BWPC will give this requirement careful consideration, to respect employee confidentiality and General Data Protection Regulation responsibilities.
- 6.3** Records will be treated as confidential and be kept no longer than necessary in accordance with the data protection principles set out in the Data Protection Act 2018. This Act also gives individuals the right to request and have access to certain personal data stored about them.

Disciplinary Procedure

7. Principles

- 7.1** Wherever possible BWPC will attempt to resolve the matter on an informal basis. If, however, the matter cannot be resolved on this basis, BWPC will consider taking formal disciplinary action.
- 7.2** If during the disciplinary meeting, it becomes clear that the employee is raising a grievance, the disciplinary process will be suspended to allow the grievance to be dealt with formally.
- 7.3** Employees are entitled to be accompanied by a companion, work colleague or trade union representative to all meetings, interviews and hearings.
- 7.4** No disciplinary action will be taken against an employee until the allegations have been fully investigated.
- 7.5** The employee will not be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty may result in a dismissal without notice or payment in lieu of notice.
- 7.6** Employees must endeavour to attend hearings, if the employee fails twice to attend a hearing, the hearing will proceed in their absence, unless there are mitigating circumstances against it. The employee's companion may attend in such circumstances and will be allowed the opportunity to present the employee's case. The employee will also be allowed to make written submissions in such a situation.

8. Notices

- 8.1** Within 7 working days of BWPC receiving a complaint regarding an employee, written acknowledgement of receipt will be sent. The employee will be asked in writing, to attend an informal meeting, investigatory meeting, or a disciplinary hearing. The initial meeting should be held as soon as possible and in any case within 14 days. The written notification will include the time, date, location of the meeting and the following details where appropriate.
- The nature of the misconduct
 - Reason for action taken.
 - The right to be accompanied.
 - The type of warning such as first, final or dismissal.
 - Personal Improvement Plan (PIP) and timescales
 - Warn that a failure to complete PIP could result in dismissal.
 - If gross misconduct the potential for dismissal

- If dismissed the date on which employment is terminated.
- The period for which the warning is extant, after such period BWPC will review the warning or the warning will automatically lapse.
- The right to appeal against penalty/actions imposed.
- Any actions that will be undertaken by BWPC

8.2 The employee/employer will provide any supporting evidence at least 3 days in advance of the disciplinary hearing and advise of the relevant witnesses they intend to call to the hearing.

8.3 If misconduct continues BWPC may rely on the written notices for future consideration.

8.4 If an employee has difficulty reading, or if English is not their first language, their manager will explain the content of any written correspondence to them orally.

8.5 No action under this procedure (with the exception of suspension in a case of suspected or known gross misconduct) will be initiated against an employee if they are a Trade Union Official without prior notification to the Branch Secretary or full time Union Official of the appropriate Union.

9. Disciplinary Actions

BWPC has the authority to take action against an employee's misconduct or performance, the action must be appropriate and proportionate.

Below are guidelines for action following any meeting, which may include an investigatory meeting.

Conduct/Performance	Meeting Type	Action	Extant
Minor misconduct	Informal	Verbal warning	6 months
Minor misconduct and/or repeat complaint. Poor performance	Formal	First Written Warning PIP together with timescales	6 months 6 months
Failure to improve sufficiently within PIP timescale.	Disciplinary Hearing	Final written warning PIP together with timescales	12 months
Further misconduct within 12 months of receipt of Final Written warning	Disciplinary Hearing	Dismissal	10 years
Gross misconduct	Disciplinary Hearing	Dismissal	Life

10. Disciplinary Meetings

Disciplinary meetings will take the form of Informal, Investigatory and Disciplinary Hearings and will take place without undue delay.

The employee is allowed to be accompanied by a companion or a certified trade union representative in all stages of the Disciplinary process. The employee must inform the panel who they have chosen as a companion.

If the employee or companion cannot attend the meeting within the required timescale, this can be extended by mutual agreement. The meeting should be held as soon as possible.

The companion must be allowed to address the meeting in order to:

- Put the worker's case
- Sum up the worker's case

- Respond on the worker's behalf to any view expressed at the hearing
- Confer with the worker during the meeting.

The companion cannot

- Answer questions put to the employee,
- Address the meeting without employees consent or
- Prevent employee from explaining their case.

The meeting must be held in private with no interruptions and can be recorded (providing all parties consent) or a person appointed to take notes. The lead will

- Make introductions as necessary.
- Always remain impartial and objective.
- Allow the employee/companion to present their evidence.
- Carefully consider the options available to seek an amicable resolution.
- Consider adjourning the meeting if it is necessary to investigate any statements made or new facts which arise.
- Summarise and confirm the main points.

At the disciplinary hearing:

The Disciplinary hearing will be conducted by a panel of three members of the Council. Any Member of the Council responsible for the investigation of the disciplinary offence(s) shall not be a member of the panel, although such Councillors may present any supporting facts and materials to the disciplinary hearing

- Any member of the Disciplinary Panel and the employee/companion may question any witness.
- The Council reserves the right to conceal the identity of any or all the parties if there is a legitimate reason to do so, such as whether there is a risk to the safety of others if the identity is disclosed. In those circumstances, the Council will provide a summary of the information to the employee.

After each meeting the Chair will give a decision in writing within 7 working days of the meeting. If it is necessary to gather further information prior to deciding what actions to take, if any, the employee will be informed of the likely timescale which will be no more than 14 days.

11. Disciplinary Stages

11.1 Informal Stage

Disciplinary action should be taken as soon as possible following the incident. In the first instance the problem should be discussed in a meeting within 7 working days with their Manager/Councillor to see if an informal solution is possible. All should try to resolve the matter at this stage.

11.2 Formal Stage One

This stage applies where an improvement has not been achieved through informal action, or for a first offence which is considered sufficiently serious they may receive a first written warning.

11.3 Formal Stage Two

This applies where there is insufficient improvement following a written warning, or if the misconduct is sufficiently serious to warrant a first written warning but does not justify a final written warning.

11.4 Stage Three

This stage applies where unacceptable conduct does not improve after the first written warning, or if the misconduct is sufficiently serious to warrant a final written warning but does not justify dismissal

11.5 Stage Four

This stage applies where unacceptable conduct still fails to improve after a final written warning, or is deemed to be gross misconduct

11.6 Investigation Stage

No disciplinary action will be taken against an employee until the allegations have been fully investigated. A meeting will be held with the employee to establish their version of events, establish the facts and determine if further investigation is warranted.

- BWPC reserves the right to nominate any person to conduct the investigation where it is deemed to be appropriate.
- In more complex or serious cases of alleged misconduct or gross misconduct, it may be necessary for the investigation to be conducted by an independent Clerk/Councillor. The investigating Clerk/Councillor will be advised and supported as necessary.
- It will be an expeditious investigation and is expected to be concluded within 7 working days. If this is not possible within the timeframe the employee will be notified in writing of the reason for delay.
- May include recorded interviews eg, other employees, councillors or members of the public.
- The appointed investigator will present their findings within a written report and recommendations to the Council.
- The employee will be notified in writing of the conclusion of the investigation.

12. Suspension

12.1 If an employee is subject to an allegation which is deemed to be gross misconduct, or of a serious nature they may be suspended from work on full pay, whilst the allegation is investigated fully.

12.2 Suspension will only be implemented after careful consideration and kept under review, suspension should be as brief as possible. Suspension does not represent disciplinary action and does not involve any prejudgement or assumption of guilt. An employee's contract of employment will continue to be in force. Suspension must be authorised by the Council.

- 12.3** Whilst suspended the employee will not attempt to make contact or influence any other person involved in the investigation. The employee will be available during normal working hours if the council wish to make contact.
- 12.4** Any decision to suspend will be confirmed in writing immediately and will state that the suspension is precautionary, not disciplinary in nature, pending the outcome of the investigation and any subsequent disciplinary proceedings.

13 Right of Appeal

- 13.1** If an employee wishes to appeal against the disciplinary action, they may submit a written appeal to the Council. An appeal must be received within 7 working days of the employee receiving the decision notice of the Disciplinary hearing and must specify the grounds of appeal.

Appeals may be raised on several grounds for example:

- A failure by BWPC to follow its Disciplinary Policy
- The decision was not supported by the evidence.
- The action proposed was inadequate/inappropriate/unreasonable.
- New evidence has come to light since the disciplinary hearing.

The appeal will be heard by an Appeals Panel. The Appeals Panel will be a Panel of three Council members not previously involved in the case. The Appeal Panel will appoint a Chair from one of its members.

The employee will be notified, in writing, within 7 working days of receipt of the appeal of the time, date and place of the appeal hearing. The hearing will normally take place within 20 working days of receipt of the appeal.

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 employee's reasons for appealing against the decision of the Disciplinary Panel
 - Explain the action that the appeal panel may take after careful consideration of the facts
 - The employee or companion will be asked to explain the grounds of appeal.
 - The Chair will inform the employee that they will receive the decision and the panel's conclusions and reasons, in writing, within 7 working days of the appeal meeting.
- 13.2** The Appeal Panel may decide to uphold the decision of the Disciplinary Panel or substitute its own decision. The Appeals Panel cannot increase the penalty imposed by the Disciplinary Panel.
- 13.3** If the Appeals Panel finds in favour of the employee, all records of the disciplinary sanction will be removed from their personnel file.
- 13.4** Where an appeal lies against a dismissal, the decision to dismiss will have had immediate effect and therefore, if the dismissal is by notice, the period of notice will already have commenced on the date that the decision was given. If the decision was to dismiss the employee summarily without notice, the Council will be under no obligation to reinstate or pay the employee for any period between the date of the original dismissal and the appeal decision and the original date of termination will

stand. If the decision to dismiss is overturned, the employee will be reinstated with immediate effect and paid for any period between the date of the original dismissal and the successful appeal decision. The employee's continuous service will not be affected.

13.5 The decision of the Appeal Panel regarding is final.

14 Criminal Charges or Convictions

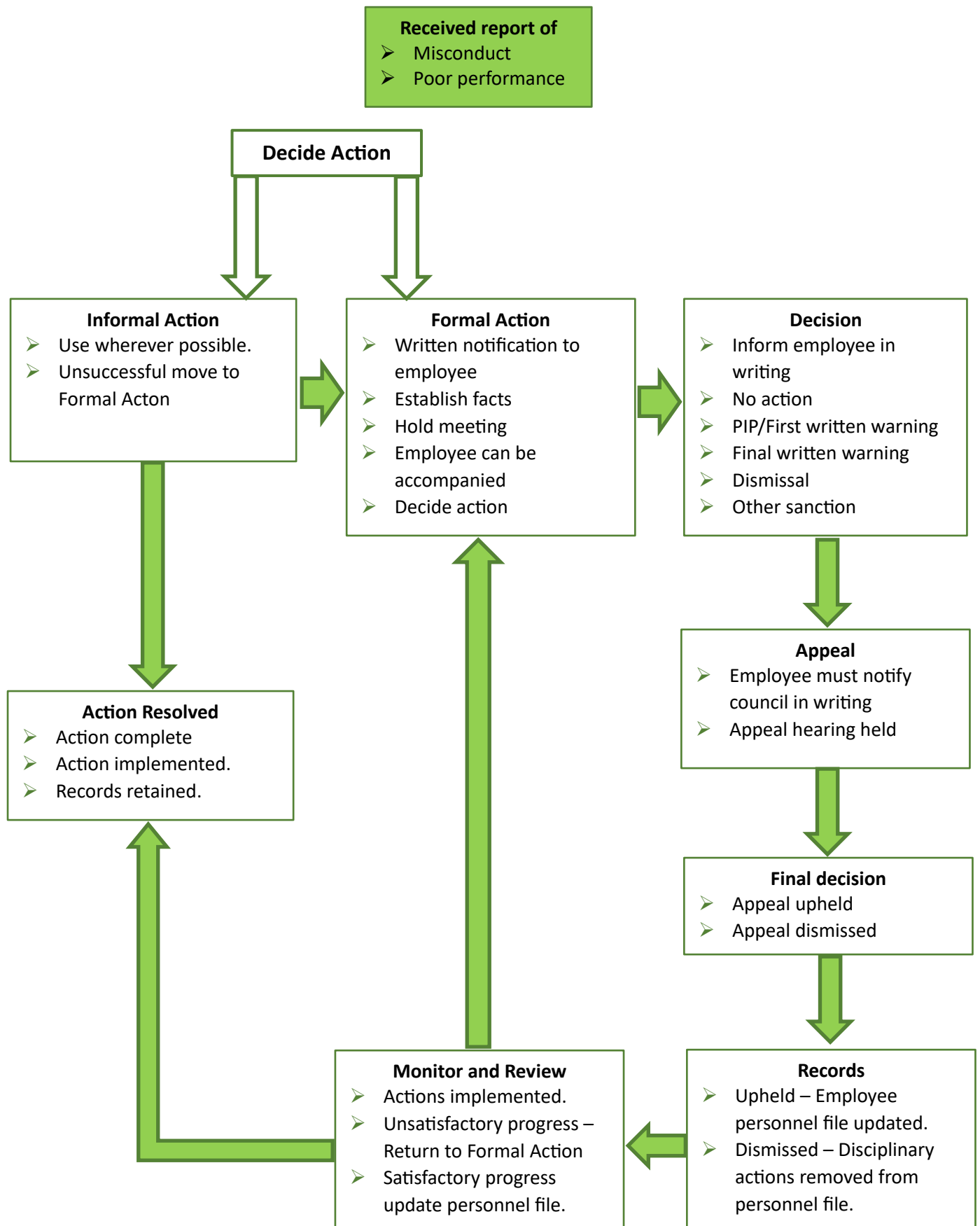
If an employee is charged with or convicted of a criminal offence, this does not automatically give rise to a disciplinary situation. Consideration needs to be given to how a charge or conviction may affect the employee's ability to undertake their job duties and their relationships with the employer, colleagues, or customers.

15. Monitoring and Review

Training will be provided to those who are expected to operate the procedure. The Actions decided by the Disciplinary Panel must be reviewed and progress monitored within the timescales directed and prior to the expiry of any sanction. The personnel file is to be updated in a timely fashion.

Failure to follow the ACAS Code of Practice can lead to an Employment Tribunal. Tribunals dealing with unfair dismissal claims are particularly interested in whether the employer followed a procedure and whether the employer acted fairly and reasonably.

Disciplinary Procedure



Mediation can be considered at any time during the process.

Always follow the ACAS Code of Practice