

Upton Magna Parish Council

GRIEVANCE AND DISCIPLINE POLICY

Upton Magna Parish Council is committed to providing an environment where good communication can usually resolve any issues between the Council as employer and its staff. However, we know that sometimes matters cannot be resolved. This policy lays out how an employee can submit an official grievance complaint and how the Council as employer can manage a complaint against an employee.

Part 1 - GRIEVANCE

This policy is based on and complies with the ACAS Code of Practice and Guidance on discipline and grievances at work. It aims to encourage and maintain good relationships between the Council and its employees by treating grievances seriously and resolving them as quickly as possible. It sets out arrangements for you to raise concerns, problems or complaints about your employment with the Council and will be applied fairly, consistently and in accordance with the Equality Act 2010.

Most grievances can be resolved quickly and informally through discussion with the Staffing Committee. If this does not resolve the problem, you should initiate the formal procedure set out below. (If your grievance is about a councillor, it may be appropriate to involve that councillor at the informal stage. This will require both the consent of you and the councillor).

This procedure applies to all employees regardless of length of service. This procedure does not form part of any employee's contract of employment. It may be amended at any time, and we may depart from it depending on the circumstances of any case.

Where your grievance is about the conduct of a councillor and therefore amounts to a Code of Conduct complaint a separate process must be followed in accordance with the High Court decision in R (Harvey) v Ledbury Town Council (2018). You will need to raise your grievance in writing to the Council's principal monitoring officer. In all other cases the Grievance procedure documented below should be followed.

Grievance Process

Step 1: Written grievance

- a. You should put your grievance in writing to the Chairman of the Council's Staffing Committee.
- b. The written grievance should set out the nature of the complaint, including any relevant facts, dates, and names of individuals involved so that we can investigate it.
- c. The Staffing Committee will deal with your grievance. No councillor with direct involvement in the matter shall be involved in the grievance process. If necessary, another councillor may be seconded to the Staffing Committee to maintain a quorum of three.
- d. If the Staffing Committee decides that it is appropriate (e.g., if the grievance is complex), it may appoint an investigator to conduct an investigation before the grievance meeting to establish the facts of the case. The investigation may include interviews (e.g., the employee submitting the grievance, other employees, councillors or members of the public).
- e. The investigator will summarise their findings (usually in an investigation report) and present their findings to the Staffing Committee.

Step 2: Grievance meeting

- a. Within 21 working days of the Council receiving your grievance (or such longer period as is necessary to allow an investigation), you will normally be asked, in writing, to attend a grievance meeting. The written notification will include:
 - The names of the Chairperson and other members of the Staffing Committee.
 - The date, time and place for the meeting. You will be given reasonable notice of the meeting.
 - Your right to be accompanied by a workplace colleague, a trade union representative or a trade union official.
 - A copy of the Council's Grievance Procedure.
 - Confirmation that, if necessary, witnesses may attend (or submit a witness statement) on your behalf and that you should provide the names of your witnesses as soon as possible before the meeting.
 - Confirmation that you will provide the Council with any supporting evidence in advance of the meeting, usually with at least three days' notice.
 - The findings of the investigation if there has been one.

- An invitation for you to request any adjustments to be made for the hearing (for example where you have a health condition).
- b. You should make every effort to attend the grievance hearing.
- c. If you or your companion cannot attend at the time specified you should let us know as soon as possible and we will try, within reason, to agree an alternative time.
- d. The procedure to be followed at the Grievance Meeting is as follows:
- The Chairperson will introduce the members of the Staffing Committee.
 - You (or your companion) will set out the grievance and present the evidence.
 - The Chairperson and/or panel members will ask you questions about the information presented and will want to understand what action you want the Council to take.
 - Any member of the Staffing Committee, you, or your companion, can question any witness.
 - You (or your companion) will have the opportunity to sum up your grievance.
- e. We may adjourn the meeting if we need to conduct further investigations, after which the meeting will usually be reconvened.
- f. We will write to you, usually within 10 days of the last grievance meeting, to confirm our decision and notify you of any further action that we intend to take to resolve the grievance. We will also advise you of your right of appeal.

Step 3: Appeals

- a. If the grievance has not been resolved to your satisfaction you may appeal in writing to the Council (addressed to the Chair), stating your full grounds of appeal, within one week of the date on which the decision was sent or given to you.
- b. Appeals may be raised on a number of grounds, e.g.:
- A failure by the Council to follow its Grievance policy resulting in some unfairness to you.
 - The decision was not supported by the evidence.
 - The action proposed by the Staffing Committee was inadequate or inappropriate.
 - New evidence has become known since the Grievance meeting.

c. The appeal will be heard by a panel of three members of the Council who have not previously been involved in the case. The appeal panel will appoint a Chairperson from one of its members.

d. We will notify you, in writing, usually within 14 working days of receipt of your appeal of the time, date and place of the appeal meeting. The meeting will usually take place within 28 working days of the Council's receipt of the appeal. You have the right to be accompanied by a workplace colleague, a trade union representative or a trade union official

e. At the appeal meeting, the Chairperson will:

- Introduce the panel members to you.
- Explain the purpose of the meeting, which is to hear your reasons for appealing against the decision of the Staffing Committee.
- Explain the action that the appeal panel may take.

f. You (or your companion) will be asked to explain your grounds of appeal.

g. The Chairperson will inform you that you will receive the decision and the panel's reasons, in writing, within 10 working days of the appeal meeting.

h. The appeal panel may decide to uphold the decision of the Staffing Committee or substitute its own decision.

i. There is no further right of appeal.

Part 2 - DISCIPLINE

This policy is based on and complies with the ACAS Code of Practice and Guidance on Discipline and Grievances at work. The policy is designed to help you improve unsatisfactory conduct in your job. Wherever possible, we will try to resolve our concerns about your behaviour informally, without starting the formal procedure set out below. The standards of conduct expected of all employees are set out in the Disciplinary Rules (Part 3 of this document).

It is our policy to ensure that any disciplinary matter is dealt with fairly, consistently and in accordance with the Equality Act 2010 and that steps are taken to establish the facts and to give you the opportunity to respond before taking any formal action. The

procedure applies to all employees regardless of length of service. It does not apply to agency workers or self-employed contractors.

This procedure is used to deal with misconduct. It does not apply to cases involving genuine sickness absence. This procedure does not form part of any employee's contract of employment, and it may be amended at any time. We may also vary this procedure, including any time limits, as appropriate in any case.

The disciplinary procedure will be dealt with by the Staffing Committee. No councillor with direct involvement in the matter will be involved. If necessary, another councillor may be seconded to the Staffing Committee to maintain a quorum of three.

Minor conduct issues

Informal coaching and supervision will be considered, where appropriate, to improve conduct and/or attendance and minor conduct issues can often be resolved informally between you and the Chairperson of the Staffing Committee. These discussions should be held in private and without undue delay whenever there is cause for concern.

Where appropriate, a note of any such informal discussions may be placed on your personnel file but will be ignored for the purposes of any future disciplinary hearings. In some cases, an informal verbal warning may be given, which will not form part of your disciplinary records. Formal steps will be taken under this procedure if the matter is not resolved, or if informal discussion is not appropriate (for example, because of the seriousness of the allegation).

If you have difficulty at any stage of the procedure because of a disability, you should discuss the situation with your line manager as soon as possible.

Confidentiality

Our aim is to deal with disciplinary matters sensitively and with due respect for the privacy of any individuals involved. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.

You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings. Any breach of this requirement will be dealt with as a disciplinary matter, unless it has been agreed that allowing you to record a

meeting is a reasonable adjustment in accordance with the provisions of the Equality Act 2010.

You will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against you, unless we believe that a witness's identity should remain confidential.

Investigations

The purpose of an investigation is for us to establish a fair and balanced view of the facts relating to any disciplinary allegations against you, before deciding whether to proceed with a disciplinary hearing. The amount of investigation required will depend on the nature of the allegations and will vary from case to case. It may involve interviewing and taking statements from you and any witnesses, and/or reviewing relevant documents.

If the Staffing Committee believes there may be a disciplinary case to answer, we may initiate a more detailed investigation to establish the facts of a situation or to establish the perspective of others who may have witnessed misconduct. The Investigator will be independent and will normally be a councillor. If the Staffing 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 Staffing Committee will notify you in writing of the alleged misconduct and details of the person undertaking the investigation. You may be asked to meet the Investigator as part of the disciplinary investigation. Investigative interviews are solely for the purpose of fact-finding and no decision on disciplinary action will be taken until after a disciplinary hearing has been held.

You must co-operate fully and promptly in any investigation. This will include informing us of the names of any relevant witnesses, disclosing any relevant documents to us and attending investigative interviews if required. When you meet with the Investigator, you will have the opportunity to comment on the allegations of misconduct. Employees may be accompanied or represented by a workplace colleague, a trade union representative or a trade union official 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 you.

The Investigator will establish the facts of the case as quickly as possible and prepare a report that recommends to the Staffing Committee whether or not disciplinary action should be considered under the policy. They will recommend either:

- You have 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
- You have a case to answer, and a formal hearing should be convened under the Council's disciplinary procedure.

The Investigator will submit the report to the Staffing 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.

Criminal allegations

Where your conduct is the subject of a criminal investigation, charge or conviction the Council will investigate the facts before deciding whether to take formal disciplinary action.

The Council will not usually wait for the outcome of any prosecution before deciding what action, if any, to take. Where you are unable or have been advised not to attend a disciplinary hearing or say anything about a pending criminal matter, we may have to take a decision based on the available evidence.

A criminal investigation, charge or conviction relating to conduct outside work may be treated as a disciplinary matter if we consider that it is relevant to your employment.

Suspension

In some circumstances we may need to suspend you from work. The suspension will be for no longer than is necessary to investigate any allegations of misconduct against you or so long as is otherwise reasonable while any disciplinary procedure against you

is outstanding. We will confirm the arrangements to you in writing. While suspended you should not carry out duties or contact any of our clients, customers, suppliers, contractors or staff, unless you have been authorised to do so. We will make arrangements for you to access any information or documents that you reasonably require to respond to any allegations.

While on suspension, you are required to be available during normal hours of work in the event that we need to make contact. You 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.

Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations. Subject to the terms of your contract, you will continue to receive your full basic salary and benefits during the period of suspension.

The disciplinary hearing

Following any investigation, if the Staffing Committee decides that there is a case to answer, it will arrange a formal hearing.

You will be invited, in writing, to attend a disciplinary meeting. The letter will confirm the following:

- The names of the Chairperson and other members of the Staffing Committee.
- The date, time and place for the meeting. You will be given reasonable notice of the meeting.
- Details of the alleged misconduct and its possible consequences.
- A copy of the information provided to the Staffing Committee which may include the investigation report, supporting evidence and a copy of the Council's disciplinary procedure.
- A copy of any witness statements, except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible while maintaining confidentiality.
- Your right to be accompanied by a workplace colleague, a trade union representative or a trade union official.

- Confirmation that, if necessary, witnesses may attend (or submit a witness statement) on your behalf and that you should provide the names of your witnesses as soon as possible before the meeting.
- Confirmation that you will provide the Council with any supporting evidence in advance of the meeting, usually with at least three days' notice.
- The findings of the investigation if there has been one.
- An invitation for you to request any adjustments to be made for the hearing (for example where you have a health condition).

You are expected to make reasonable efforts to attend any meetings/hearings and a failure to attend may result in us proceeding and/or reaching a decision in your absence.

Right to be accompanied

You may bring a companion to any investigatory, disciplinary hearing or appeal hearing under this procedure. The companion may be either a trade union representative or a colleague. You must tell us who your chosen companion is, in good time before the hearing.

The companion is permitted to address such meetings/hearings, to put your case and to confer with you. The companion cannot answer questions put to you, address the meeting/hearing against your wishes or prevent you from explaining your case.

Procedure at disciplinary hearings

If you or your companion cannot attend the hearing, you should inform us immediately and we will arrange an alternative time. You must make every effort to attend the hearing, and failure to attend without good reason may be treated as misconduct in itself. If you fail to attend without good reason or are persistently unable to do so (for example for health reasons), we may have to take a decision based on the available evidence.

The purpose of the disciplinary hearing is for the allegations to be put to you and then to allow you the opportunity to give your perspective. The disciplinary hearing will be conducted as follows:

- The Chairperson will introduce the members of the Staffing Committee to you and explain arrangements for the hearing.
- The Chairperson will set out the allegations and invite the investigator to present the findings of the investigation report (if there has been a previous investigation) and where there is no investigation report the investigator will provide a verbal summary of the allegations.
- The Chairperson will then invite you to present your account.
- You (or your companion) will set out your case and present evidence (including any witnesses and/or witness statements).
- Any member of the Staffing Committee, you (or your companion) may question the investigator, and any witness. Any member of the Staffing Committee can ask you questions.
- You (or your companion) will have the opportunity to sum up.

We may adjourn the disciplinary hearing if we need to carry out any further investigations such as re-interviewing witnesses in the light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

The Chairperson will inform you in writing of the Staffing Committee's decision and their reasons for it, usually within 10 days of the disciplinary hearing and you will be notified of your right to appeal the decision.

If the Staffing Committee decides that no disciplinary action should be taken, then no record of the matter will be retained in your personnel file.

Disciplinary penalties

The usual penalties for misconduct are set out below. No penalty should be imposed without a hearing. We aim to treat all employees fairly and consistently. You will not normally be dismissed for a first act of misconduct, unless we decide it amounts to gross misconduct or you have not yet completed your probationary period.

Stage 1 - First written warning.

A first written warning will usually be appropriate for a first act of misconduct where there are no other active written warnings on your disciplinary record. 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 will result in more serious disciplinary action.
- Your right to appeal.
- That a note confirming the written warning will be placed on your personnel file, that a copy will be provided to you and that the warning will remain in force for a specified period of time (e.g., 12 months).

Stage 2 - Final written warning

A final written warning will usually be appropriate for:

- a. misconduct where there is already an active written warning on your record; or
- b. misconduct that we consider sufficiently serious to warrant a final written warning even though there are no other active warnings on your record.

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 will result in more serious disciplinary action up to and including dismissal.
- Your right of appeal.
- That a note confirming the final written warning will be placed on your personnel file, that a copy will be provided to you and that the warning will remain in force for a specified period of time (e.g., 12 months).

Stage 3 – Dismissal

Dismissal will usually only be appropriate for:

- a. any misconduct during your probationary period.
- b. further misconduct where there is an active final written warning on your record; or
- c. any gross misconduct regardless of whether there are active warnings on your record. Gross misconduct will usually result in immediate dismissal without notice or payment in lieu of notice (summary dismissal). Examples of gross misconduct are set out in our Disciplinary Rules (Part 3 of this document).

The Council will consider very carefully a decision to dismiss. If you are dismissed, you will receive a written statement of the reasons for dismissal, the date on which your employment will end and details of your right of appeal.

Appeals

If you feel that disciplinary action taken against you is wrong or unjust you should appeal in writing, stating your full grounds of appeal, to the Council (addressed to the Chair) letter within one week of the date on which you were informed of the decision.

The grounds for appeal include:

- A failure by the Council to follow its disciplinary policy which you believe has resulted in some unfairness.
- That the Staffing Committee's disciplinary decision was not supported by the evidence.
- That the disciplinary action was too severe in the circumstances of the case.
- That new evidence has come to light since the disciplinary hearing.

If you raise any new matters in your appeal, we may need to carry out further investigation. If any new information comes to light, we will provide you with a summary including, where appropriate, copies of additional relevant documents and witness statements. You will have a reasonable opportunity to consider this information before the hearing, and you or your companion may comment on any new evidence arising during the appeal before any decision is taken.

We will give you written notice of the date, time and place of the appeal hearing. You will be notified of your right to be accompanied (as above).

The appeal hearing will be conducted impartially by a panel of three members of the Council who have not previously been involved in the case. The appeal panel will appoint a Chairperson from one of its members. The person who investigated the issue may also be present. We may also choose to have an HR representative in attendance.

At the appeal hearing, the Chairperson will:

- Introduce the panel members to you.
- Explain the purpose of the meeting, which is to hear your reasons for appealing against the disciplinary decision.
- Explain the action that the appeal panel may take.

You (or your companion) will be asked to explain your grounds of appeal.

We may adjourn the appeal hearing if we need to carry out any further investigations in the light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

At the conclusion of the appeal hearing (or any reconvened appeal hearing), the Chairperson will inform you that you will receive the decision and the panel's reasons in writing within 10 days. There will be no further right of appeal.

Following the appeal hearing we may:

- confirm the original decision of the Staffing Committee.
- revoke the original decision of the Staffing Committee; or
- substitute a less serious sanction.

If on appeal the panel decide that no disciplinary action was warranted, no record of the matter will be retained on your personnel file. If an appeal against dismissal is upheld, you will be paid in full for the period from the date of dismissal and your continuity of service will be preserved.

Part 3 - DISCIPLINARY RULES

These Disciplinary Rules should be read in conjunction with our Disciplinary Procedure (above). The aim of the Disciplinary Rules and Disciplinary Procedure is to set out the standards of conduct expected of all staff and to provide a framework within which the Council can work with staff to maintain those standards and encourage improvement where necessary.

Rules of conduct

While working for us you should at all times maintain professional and responsible standards of conduct. In particular you should:

- a) observe the terms and conditions of your contract, particularly with regard to:
 - (i) hours of work and timekeeping.
 - (ii) confidentiality.
 - (iii) sickness absence.

- b) observe all our policies, procedures and regulations.
- c) take reasonable care in respect of the health and safety of colleagues and third parties and comply with our Health and Safety Policy.
- d) comply with all reasonable instructions given by the Council.
- e) act at all times in good faith and in the best interests of the Council.
- f) not misuse our resources and facilities, including telephones, email and internet.

Failure to maintain satisfactory standards of conduct may result in action being taken under our Disciplinary Procedure.

Misconduct

The following are examples of matters that will normally be regarded as misconduct and will be dealt with under our Disciplinary Procedure:

- a) Minor breaches of our policies and procedures including minor breaches of health and safety rules.
- b) Minor breaches of your contract.
- c) Damage to, or unauthorised use of, our property.
- d) Poor timekeeping.
- e) Time wasting.
- f) Unauthorised and/or undisclosed recording of any meeting, including disciplinary, sickness absence, capability and/or grievance meetings.
- g) Unauthorised absence from work.
- h) Negligence in the performance of your duties.
- i) Minor examples of inappropriate behaviour.
- j) Unreasonable refusal to follow reasonable instructions.

This list is intended as a guide and is not exhaustive.

Gross misconduct

Gross misconduct is a serious breach of contract and includes misconduct which, in our opinion, is likely to prejudice the organisation or reputation or irreparably damage the working relationship and trust between us. Gross misconduct will be dealt with under our Disciplinary Procedure and will normally lead to dismissal without notice or pay in lieu of notice (summary dismissal).

The following are examples of matters that are normally regarded as gross misconduct:

- a) Theft.
- b) Unauthorised removal of our property or the property of a colleague, contractor, customer or member of the public.
- c) Fraud, forgery or other dishonesty, including fabrication of expense claims.
- d) Actual or threatened physical violence or bullying or behaviour which provokes violence.
- e) Deliberate and/or serious damage to our buildings, fittings, stock, property or equipment, or the property of a colleague, contractor, customer or member of the public.
- f) Serious misuse of the organisation's property or name.
- g) Repeated or serious failure to obey instructions, or any other serious act of insubordination.
- h) Unlawful discrimination or harassment.
- i) Bringing the Council into serious disrepute.
- j) Being under the influence of or in any way impaired by alcohol or illegal drugs at work or failing an alcohol/drugs test.
- k) Refusal to submit to a drugs or alcohol test at work.
- l) Causing loss, damage or injury through serious negligence.
- m) Serious or repeated breach of health and safety rules or our policies or procedures.
- n) Unauthorised use or disclosure of confidential information or failure to ensure that confidential information in your possession is kept secure.
- o) Conviction for a criminal offence that in our opinion may affect our reputation or our relationships with our staff, customers or the public, or otherwise affects your suitability to continue to work for us.
- p) Possession, use, supply or attempted supply of illegal drugs.
- q) Serious neglect of duties, or a serious or deliberate breach of your contract or operating procedures.
- r) Unauthorised use, processing or disclosure of personal data contrary to our Data Protection Policy.
- s) Making untrue allegations in bad faith against a colleague.
- t) Serious and/or repeated breaches of our policies and procedures.
- u) Driving a vehicle in an unsafe manner or otherwise than in accordance with the law whilst on Council business.

This list is intended as a guide and is not exhaustive

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