

COLLINGHAM *Parish Council*

DISMISSAL AND DISCIPLINARY PROCEDURE

ADOPTED 12 MAY 2022

Next Review: May 2023

1. INTRODUCTION

- 1.1 It is the aim of the Council to encourage improvement in individual conduct and performance. The disciplinary procedures are designed to provide employees with a fair and consistent method of dealing with alleged failures to comply with certain standards of behaviour within their work sphere.
- 1.2 These procedures can be entered at any stage depending on the severity of the alleged offence.
- 1.3 These procedures apply to all or any employees of Collingham Parish Council.

2. WHO DEALS WITH THE DIFFERENT LEVELS OF THE PROCEDURE?

- 2.1 The designated Parish Councillors have the power to suspend, discipline and dismiss employees, in consultation with the Chair of the Parish Council. (The designated Parish Councillors having responsibility for employees, this being agreed at the Annual Meeting with full agreement of all Council Members.)
- 2.2 The designated Parish Councillors should deal with cases which warrant either suspension or dismissal, but in exceptional circumstances where this is not practical, appointed Parish Councillors may deal with the case at the discretion of the Chair and Vice Chair of the Parish Council.

3. PRINCIPLES OF THE PROCEDURE

- 3.1 An allegation of a disciplinary offence will be dealt with as a matter of urgency. The procedure is designed to establish the facts quickly and to deal consistently with disciplinary issue. No disciplinary action will be taken until the matter has been fully investigated and the status quo will normally apply until the investigation has been completed. (The Investigating Officer must be satisfied on the evidence available that the allegation was not made maliciously).
- 3.2 At each stage the employee will be advised of the nature of the complaint, be given the opportunity to state their case, and be represented or accompanied by a trade union official, friend or colleague.
- 3.3 Any employee subject to a disciplinary interview shall be informed immediately in writing of the decision, together with the reasons relating thereto.
- 3.4 Employees have a right to appeal against any disciplinary action taken against them.
- 3.5 Unless special circumstances prevail e.g. gross misconduct, no employee should be dismissed for a first breach of discipline.
- 3.6 In relation to any allegation of a breach of discipline in which no disciplinary action is taken (i.e. unfounded), the employee shall be informed in writing accordingly. No account of such an allegation will be recorded or reported to any future disciplinary hearing. This paragraph is not intended to relate to informal action referred to in

[paragraph 5.1.](#)

4. DISCIPLINARY ACTION

- 4.1 The form of any disciplinary action will depend on the nature of the offence and the circumstances.

5. INFORMAL ACTION

- 5.1 It is hoped that a range of minor disciplinary matters can be dealt with informally by a frank and open discussion between Parish Councillors and the employee. If the employee wishes they may have a union representative present. It is not expected that a full-time union official would normally represent the employee in such informal discussions. If appropriate, a note of the discussion will be prepared by the Councillors, agreed with the employee and circulated. This action will not constitute a 'formal warning' and the discussions and the note should not be referred to once a period of 6 months has elapsed after the meeting.

6. FORMAL ACTION

- 6.1 Minor breaches of discipline, but beyond those referred to in [Paragraph 5.1](#), (i.e. normally action that, if proven, may result in an oral warning) may be dealt with by the designated Parish Councillors. The employee should be invited in writing to attend a disciplinary interview, informed of the nature of the complaint against them and informed of their right to be accompanied by a trade union representative or colleague. If at the conclusion of the interview an oral warning is given this will be recorded on the appropriate form ([Appendix D](#)), together with a brief statement of the circumstances. This will be kept by the Chair of the Parish Council, to be placed on the employee's personal file. A copy will be sent to the employee.
- 6.2 In cases where a more serious breach of discipline occurs; or if the required improvement is not made, or maintained after an oral warning; or there has been a further minor breach of discipline, designated Parish Councillors will organise a preliminary investigation to help to establish the relevant facts. These persons will be referred to as the Investigating Councillor. The matters to be investigated should be set out in writing for the employee prior to the investigation. It is expected that normally the employee will co-operate with any such investigation and may be accompanied by a trade union representative or colleague. It is acknowledged that during the investigation additional items of a potential disciplinary nature may be identified. The investigation may be extended to include these provided that this is confirmed in writing to the employee and the employee is given a further opportunity to respond to them. If the matters to be investigated are not set out in writing before the investigation commences then the employee may request a further separate investigation prior to any disciplinary interview being instigated. The interviewing procedure specifies rights of representation. An investigation under the Council's Harassment Procedure may also constitute a preliminary investigation under this paragraph and the terms of the investigation will normally be set out in the harassment complaint.
- 6.3 At the conclusion of the investigation the Investigating Councillor will prepare a report summarising the key information that can be established, any areas of contention and a recommendation as to whether a disciplinary interview should be the next stage of the process. This report will be sent to the employee and any representative used

by the employee. The employee or their representative will be given 7 days to comment in writing on this report.

6.4 Exceptionally the designated Parish Councillors may reach agreement with the employee that such a preliminary investigation is not necessary

6.5 If the Investigating Councillor comes to the conclusion that formal disciplinary action should be taken the following three-step process should be followed.

7. STEP ONE

7.1 The designated Parish Councillors will write to the employee notifying them of the allegations against them and the basis of the allegation. They should be invited to attend a Disciplinary Interview and should be advised that he/she has the right to be accompanied and will be allowed to discuss the matter with the representative before the interview.

7.2 The employee's chosen representative will be allowed to respond on the employee's behalf in order to:

i) put the employee's case

ii) sum up the employee's case

iii) respond on the employee's behalf to any view expressed at the interview.

7.3 A minimum of 10 working days' notice (or such other time as may be mutually agreed in any particular case) will be given in order to permit the employee adequate time to prepare their case.

8. STEP TWO

8.1 A Disciplinary Interview should be held to discuss the allegations. After the interview the employee must be informed of any decision and offered the right of appeal.

8.2 Any documents that will be referred to at the interview should be sent to the other party at least 5 working days prior to the interview. Documents submitted after this date will only be allowed at the discretion of the officer hearing the case. The Investigating officer's report and any attached papers can be used and referred to also at the interview by either party provided it was sent to the employee as specified in [Paragraph 6.3](#).

8.3 [Appendix B](#) covers the procedure to be followed at a Disciplinary Interview.

8.4 If on the evidence offered the officers taking the interview conclude that the alleged breach of discipline is substantiated they will decide on the appropriate disciplinary action to be taken. This can include:-

(i) Written warning

(ii) Final written warning

(iii) Dismissal with due notice or pay in lieu thereof

(iv) Summary dismissal (gross misconduct only).

8.5 Where it is decided that no action is justified the employee should be informed.

8.6 The decision will be confirmed in writing to the employee within 5 working days, together with details of the right to appeal. The employee should also be given a clear indication of the consequences, which could ensue from the need for any further

disciplinary action. The appropriate form ([Appendix D](#)) should also be completed and a copy sent to the employee and to the Chairman of the Parish Council.

- 8.7 The employee must take all reasonable steps to attend the interview. If the employee fails to attend the Disciplinary Interview through circumstances outside their control and unforeseeable at the time the meeting was arranged, the employer should arrange another date to hold the interview. A decision may be taken in the employee's absence if they fail to attend the re-arranged interview without good

9. STEP THREE- (APPEALS)

- 9.1 An employee wishing to appeal against disciplinary action must submit to the Chair of the Parish Council written notice clearly stating the grounds of the appeal within 10 working days of receiving the written confirmation of the action to be taken.
- 9.2 The employee must then be invited to attend an Appeal Hearing, which will be held within 20 working days of the date of the notification of the appeal.
- 9.3 The Appellant will be given written notice at least 10 working days in advance of the time and place of the hearing. He/she may be represented or assisted by a trade union official or some other person and may call witnesses and produce documents relevant to the defence at the hearing.
- 9.4 An Appeal against an oral, written or final written warning will be heard by the Chair or Vice Chair of the Parish Council if not concerned with the case.
- 9.5 Appeals against dismissal will be heard by three Parish Councillors not involved with the case and the Solicitor to the Parish Council.
- 9.6 Employees serving a probationary period, who are not transferred to established staff on the grounds of capability, will have a right of appeal to the Chair or Vice Chair of the Parish Council.
- 9.7 The disciplinary action imposed will remain in force unless and until it is modified as a result of the appeal.
- 9.8 At an appeal hearing, papers (including the statement of case of both parties) shall be exchanged at least 5 working days before the date of the hearing, together with details of any witnesses to be called by either party. The Appellant shall be provided on request with all relevant documentation, e.g. contract of employment, copies of original correspondence (subject to this not being privileged information).
- 9.9 Any request from either side for the period of notice in respect of a hearing and/or the exchange of papers to be extended shall not be unreasonably refused.
- 9.10 The decision of the Appeal will be final, subject to any additional employee rights under which the appellant or trade union can if they so wish pursue to any other appropriate body.
- 9.11 At the conclusion of the disciplinary proceedings, statements to the media by employees of the Council should be made only through approved and existing media liaison outlets. Both the employee and Parish Council are expected, normally, to protect the confidentiality of the proceedings especially where either a dismissal has not been the outcome or, if it has, until the internal appeal mechanisms have been exhausted.

N.B: See [Appendix C](#) on the Procedure of Appeal.

10. GROSS MISCONDUCT

- 10.1 Where an offence of gross misconduct is alleged to have been committed the employee may be suspended immediately with pay pending an investigation.
- 10.2 A Disciplinary Interview should then be arranged in accordance with Section 8 of this document.

N.B: See [Appendix A](#), for examples of gross misconduct.

11. SUSPENSION

- 11.1 Suspension is not an option as a form of disciplinary action.
- 11.2 When an employee is to be suspended it is required that:-
- (i) account must be taken of the need for a full investigation;
 - (ii) there should be prior consultation with the members of the Parish Council as appropriate. If this is not practicable e.g. the incident occurs at the weekend, the employee may be suspended in the first instance for up to 72 hours. Consultation should then take place and the suspension either confirmed in writing or the employee allowed to return to work.
- 11.3 An employee may be suspended by the full Parish Council:-
- (i) to enable a full investigation to be made where the possibility of dismissal may arise;
 - (ii) where it might be prudent to remove the employee from their place, or type, of work.
- 11.4 The reasons for any suspension will be made clear to the employee in writing as soon as possible. This will normally be the next working day.
- 11.5 During the period of suspension the employee shall always receive a normal day's pay.
- 11.6 An employee has no right of appeal against suspension.

12. REVIEW OF WARNINGS

- 12.1 Where a warning has been given the records will be subsequently reviewed. The warning will be regarded as "spent", i.e. not taken into account in any future disciplinary matter after the following period:-
- (i) oral warning - 6 months;
 - (ii) written warning - 1 year;
 - (iii) final written warning - 2 years.

If the employee's behaviour has been satisfactory for the given period then the warning will be removed from their personal file and the employee informed in writing by the designated Parish Councillors. If a further warning has been given within the time period of the last warning, then this will be taken into account.

13. WITNESSES

- 13.1 Normally witnesses providing factual information at disciplinary interviews and appeal hearings will not be present throughout the proceedings. Technical witnesses may be

present throughout. In the event of uncertainty the panel will determine the status of witnesses.

- 13.2 Although there is no requirement for witnesses to always produce a written statement beforehand, all parties are encouraged to do so, using if possible the form given in Appendix E, especially where serious allegations have been made. Such documents would be exchanged under the arrangements specified in [Paragraph 8.2](#).
- 13.3 Witness statements should not be sent or shown to other witnesses although it is acknowledged that representatives presenting the evidence or defending the employee may discuss the contents of other witness statements with their witnesses, especially relating to matters of contention.
- 13.4 Representatives of the employee and the Parish Council are expected to do their best endeavours to ask their witnesses not to contact witnesses of the other party.
- 13.5 Wherever practicable it is anticipated that key witnesses will attend in person. In exceptional circumstances, particularly relating to 'fear', it is recognised that witnesses may not be willing to attend. In circumstances where witnesses have submitted written evidence but do not attend, the Councillor conducting the interview will, at the request of the opposite party, adjourn the interview at the appropriate time and undertake to put further questions themselves, submitted by either party, to the absent witness. This may be done orally or in writing and the officer will report on the answers given at the re-commencement of the interview.

14. DISMISSALS – NON DISCIPLINARY ACTION

- 14.1 The three-step process outlined in this procedure for dealing with issues relating to conduct or capability must also be followed for dismissals in the following circumstances:
 - i) non-renewal of a temporary or fixed term contract.
 - ii) on the grounds of ill health
 - iii) Redundancy (except where the dismissal is one of a group of redundancies covered by the duty of collective consultation of worker representatives under the Trade Union and Labour Relations (Consolidation) Act 1992
 - iv) probationary employees not transferred to established staff.
- 14.2 The three-step process is summarised as follows:

Step one - The employee must be advised in writing of the circumstances that may result in dismissal.

Step two - the employee must be invited to attend a meeting where the issue can be discussed. The employee must take all reasonable steps to attend. After the meeting the employee shall be informed in writing of the termination of employment and given the right of appeal within 5 working days of the meeting.

Step three - If the employee wishes to appeal, they must submit to the Chair of the Parish Council written notice clearly stating the grounds of the appeal within 10 working days of receiving the written confirmation of termination of employment. The employee should be invited to attend an appeal hearing and the final decision communicated to the employee.

APPENDIX A

GROSS MISCONDUCT

Gross Misconduct is misconduct of such a nature that the Authority is justified in no longer tolerating the continued presence at the place of work of the employee who commits an offence of gross misconduct. Dismissal without notice may occur in the event of gross misconduct, but only after the matter has been considered through the formal disciplinary machinery.

It is not possible to give a comprehensive list of behaviour which would be regarded as gross misconduct but the following may be taken as some examples:-

- unauthorised removal of the Authority's property;
- sexual offences;
- sexual misconduct at work;
- fighting;
- physical assault;
- falsification of time sheets, subsistence and expenses claims, etc.
- theft;
- malicious damage to Authority property;
- deliberate falsification of qualifications or information which are a statutory or essential requirement of employment or which results in additional remuneration;
- being under the influence of drink or drugs sufficient to affect work performance significantly;
- deliberate unauthorised disclosure of confidential information (including breaches of the
- Data Protection legislation);
- gross negligence in the performance of duties;
- failure to observe rules affecting the safety of other employees or the public;
- wilful refusal to obey a reasonable instruction;
- accepting gifts/incentives from Contractors and professional consultants or other such bodies;
- conviction for a criminal offence having a direct bearing on the employee's suitability for continued employment;
- racial/sexual discrimination or harassment - persistent taunts, insults and other statements of racial prejudice or serious taunts, insults and other statements of racial prejudice that have given or could have given serious offence to other party.
- breach of personal security passwords associated with new technology
- Accessing unfit or obscene WWW areas or running up a chargeable account
- Deliberately giving misleading information during harassment or disciplinary investigations.

This list is neither exclusive nor exhaustive, and in addition there may be other offences of a similar gravity that would constitute gross misconduct. The list is liable to amendment in the light of any negotiations on disciplinary rules and procedures that may take place with the recognised unions and therefore can only be regarded as provisional.

APPENDIX B

DISCIPLINARY INTERVIEW PROCEDURE

The interview will be conducted in the following manner:

1. Introduce all parties.
2. Explain the procedure.
3. Presentation of the case for disciplinary action.
4. The employee or their representative can cross-examine.
5. The panel hearing the case to ask questions.
6. The employee or their representative to reply and present their arguments.
7. The individual being disciplined should be allowed to raise any points they wish to..
8. The panel to cross-examine.
9. Any further questions by any party.
10. Both sides then to retire, the Panel make a decision considering all the facts.
11. The Parish Councillors and the employee may be required to clear points of uncertainty in the evidence already given.
12. The parties return and the decision is given verbally and the right of appeal stated.
13. The decision be confirmed in writing as per the procedure.

APPENDIX C

PROCEDURE AT APPEAL HEARINGS (CAPABILITY, DISMISSAL AND DISCIPLINARY PROCEDURES)

1. The Panel hearing the appeal against dismissal will comprise three Councillors authorised to hear such appeals. For other such appeal hearings it will be a Councillor other than the one who instigated the disciplinary action.
2. After introductions the Panel Chair will set out the purpose and procedure of the appeal hearing.
3. The designated Parish Councillors will explain the reasons for the original decision. Any one called to give evidence will be excluded from the remaining of their side's presentation.
4. Witnesses may be called by the Council.
5. The Council's representative and any witnesses called by the Council, having given evidence against the appeal may then be the subject of examination by the appellant (or representative).
6. The witnesses may then be re-examined by the Council's representatives upon the evidence provided through his/her examination.
7. Members of the Appeals Panel may ask questions of the Council's representative and witnesses on the submitted evidence.
8. The appellant (or their representative) will state the case in the appeal. The appellant (who may be present throughout the proceedings) may be called to present evidence. Any officer or local union representative called to give evidence by the appellant or their representative will be excluded from the remaining of their side's presentation.
9. Witnesses may be called by the appellant (or their representative).
10. The appellant and any witnesses called having given evidence in support of the appeal may then be the subject of examination by the Council's representative.
11. The witness may then be re-examined by the Appellant (or representative) upon the evidence provided through his or her examination.
12. Members of the Appeals Panel may ask questions of the appellant and witnesses on the submitted evidence.
13. The Council's representative shall have the opportunity to sum up the case.
14. The employee (or representative) shall have the opportunity to sum up the case.
15. The appellant (and representative) and the Council's representatives together with any witnesses, shall withdraw.
16. The Appeals Panel (together with the Councillor acting as Secretary) will deliberate in private only recalling the appellant (and representative) and the Council's representative to clear points on uncertainty on evidence already given. If re-call is necessary, both parties will return notwithstanding that only one of them is concerned with the point giving rise to doubt.
17. The decision will normally be announced to the appellant (and the representative) and the Council's representative personally and will be confirmed in writing to the parties concerned within 5 working days.

NOTES:

- (a) With the exception of those named in [Paragraph 3](#) and [Paragraph 8](#), witnesses will not be present throughout the proceedings. After completion of each stage the witnesses will be instructed not to discuss the case in any way until the appeal has been determined.
- (b) Each statement of case should identify beforehand the names of the witnesses that will be called to give evidence. Other witnesses may be called only at the discretion of the Chair. It will be for the representative presenting the case to determine his/her witnesses although the Chair may rule out of order a particular question (prior to it being answered).
- (c) Documents not contained in the statement of case will not be admitted although the Chairman may accept these in exceptional circumstances. In such cases the other party may ask for a reasonable adjournment.
- (d) A tape recording made at the time of the dismissal and transcript notes will be accepted as evidence from either party. In cases of dispute regarding the content of the transcribed notes the tape recording will be used in preference to the notes.
- (e) The representatives and appellant will be sent written notice at least 10 working days in advance.
- (f) Papers, including statement of case, shall be exchanged at least 5 working days before the date of the hearing.
- (g) Any request from either side for the period of notice in respect of a hearing and/or exchange of papers to be extended shall not be unreasonably refused.

APPENDIX D

COLLINGHAM PARISH COUNCIL DISCIPLINARY WARNING

- 1) Name: Job Title:
- 2) Date Warning Recorded and Given:
- 3) Specific Details of Alleged Complaint(s) or Offence(s):
- 4) Details of Response by Employee:
- 5)
 - a) State Type of Warning Given: - Oral/Written/Final Written
 - b) Details of Warning Given:
 - c)* This warning Constitutes the First Stage of the Disciplinary Procedure
 - d)* Further Offence(s) will, According to the Gravity of the Offence Result in:-
 - (i) A Written Warning, or
 - (ii) A Final Written Warning
 - (iii) Suspension
 - (iv) Termination of your Employment
 - e) This Warning will remain on Record Until
 - f) There is a Right of Appeal against this Warning within Ten working Days of the Date of Receipt. Notice of Appeal should be Sent to the Chairman of the Parish Council.

* Delete as appropriate

- 6) Remedial Action to be taken to encourage improved performance/conduct – (Instruction, Training, counselling etc)

I confirm that the Warning has been Received and the Details at Item 5 Read to me and Understood.

Signed(Employee)

Date

Signed:(Employer) Designation

APPENDIX E

**COLLINGHAM PARISH COUNCIL
WITNESS STATEMENT FORM**

STATEMENT OF:

AGE IF UNDER 21:

This statement (consisting of pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything that I know to be false or do not believe to be true.

Dated the day of

SIGNATURE:

**SIGNATURE WITNESSED BY:
COLLINGHAM PARISH COUNCIL**