

## **Butlers Marston Parish Council**

### ***Disciplinary policy***

#### **Introduction**

The Council will on occasion put works out to tender by contractors but has only one Clerk, the Clerk to the Council, who becomes the subject of this policy.

The Disciplinary policy provisions made in the Council's contract of employment are based on and comply with the **2015 ACAS Code of Practice** <<http://www.acas.org.uk/index.aspx?articleid=2174>>

They also take account of the ACAS guide on discipline and grievances at work.

<[https://www.acas.org.uk/media/1043/Discipline-and-grievances-at-work-The-Acas-guide/pdf/DG\\_Guide\\_Feb\\_2019.pdf](https://www.acas.org.uk/media/1043/Discipline-and-grievances-at-work-The-Acas-guide/pdf/DG_Guide_Feb_2019.pdf)>

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

The policy is designed to help the Council's Clerk to improve unsatisfactory conduct and performance in her job. Wherever possible, the Council will try to resolve its concerns about his/her behaviour informally, without starting the formal procedure set out below.

This policy confirms:

- informal coaching and supervision will be considered, where appropriate, to improve conduct and / or attendance
- Butlers Marston Parish Council will fully investigate the facts of each case
- the Parish 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 underperformance are dealt with fairly and in a way that is consistent with required standards. However, this disciplinary policy will only be used when performance management proves ineffective.
- the Council's Clerk will be informed in writing about the nature of the complaint against him/her and given the opportunity to state his/her case.
- The Clerk will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary hearing if this becomes necessary.
- the policy provisions in the Council's contract of employment make clear that under the provisions of the 1999 Employment Relations Act Section, at this stage, the Council's Clerk has the right to have a representative of his/her choice present at any Investigatory, Disciplinary or Appeal hearing.
- this policy confirms this provision and provides details as follows of how that process is to be conducted were it to be questioned at the time.

## ***Adopted by the Parish Council on 7<sup>th</sup> October 2020***

- the representative is permitted to address such meetings, to put the Clerk's case and confer with the Clerk. The representative cannot answer questions put to the Clerk, address the meeting against the Clerk's wishes or prevent the Clerk from explaining his/her case.

### **Attendance**

The Clerk and his/her chosen representative if involved, must make all reasonable efforts to attend the hearing.

The Council will give the Clerk reasonable notice of any meetings in this procedure. The Clerk must make all reasonable efforts to attend. Failure to attend any meeting may result in it going ahead and a decision being taken. Should the Clerk not attend a meeting, he/she will be given the opportunity to be represented and to make written submissions

If the Clerk's representative is not available for the proposed date of the meeting, he/she 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 Clerk and the Council.

### **Respect for Privacy**

Information about the disciplinary matter raised by the Council 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 Clerk. The Clerks' disciplinary records will be held by Butlers Marston Parish Council in accordance with the General Data Protection Regulations (GDPR)

Audio or video recordings of the proceedings at any stage of the disciplinary procedure are prohibited, unless agreed by all affected parties.

### **Disciplinary action**

Disciplinary action taken by the Council can include a written warning, final written warning or dismissal.

This procedure may be implemented at any stage if the Clerk's alleged misconduct warrants this.

Except for gross misconduct when the Clerk may be dismissed without notice, the Council will not dismiss the Clerk on the first occasion that it decides there has been misconduct.

If the Clerk 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 Clerk to confirm any period of suspension and the reasons for it.

The Parish 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 consent of affected parties.

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### **Examples of misconduct**

Misconduct is Clerk 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 Council's 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 Clerk 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 Clerk is required to be available during normal hours of work in the event that the Council needs to make contact. The Clerk must not otherwise contact or attempt to contact or influence anyone connected with the investigation in any way.

Similarly, while on suspension, the Clerk will not be required to fulfil any other work commitments. The Council will make arrangements for the Clerk to access any information or documents required to respond to any allegations.

### **Examples of unsatisfactory work performance**

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

- inadequate application of management instructions/office procedures
- inadequate IT skills
- unsatisfactory management of staff
- unsatisfactory communication skills.

### **INFORMAL PROCEDURES**

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 this disciplinary procedure.

If, on behalf of the Council the Chair believes there may be a disciplinary case to answer, the Council may initiate a more detailed investigation undertaken to establish the facts of a situation or to establish the perspective of others who may have witnessed misconduct.

Where minor concerns about conduct become apparent, it is the Chairman's responsibility to raise this with the Clerk and to clarify the improvements required. A file note will be made and kept by the Chairman. 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 Chairman may decide to formalise the discussions and invite the Clerk 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 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 appointed from outside the Parish Council. The Investigator will be appointed as soon as possible after the allegations have been made. The Chair 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.
- who the findings should be reported to and who to contact for further direction if unexpected issues arise or advice is needed.

The Chairman will notify the Clerk in writing of the alleged misconduct and details of the person undertaking the investigation. The Clerk may be asked to meet the investigator as part of the disciplinary investigation. The Clerk will be given sufficient 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 Clerk will be provided with a copy of this disciplinary procedure. The Parish Council will also inform the Clerk that when he/she meets with the Investigator, he/she will have the opportunity to comment on the allegations of misconduct.

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The Investigator will be asked to submit their findings 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 disciplinary meeting (see below).

The Clerk may be accompanied or represented (for example by another Parish Clerk) at any investigatory meeting.

If there are other persons (e.g., Councillors, electors of the Parish 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 Clerk.

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

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

- the Clerk has no case to answer and there should be no further action under the Council's disciplinary procedure
- the matter is not serious enough to justify further use of the disciplinary procedure and can be dealt with informally or
- the Clerk has 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 Chairman 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.

### **FORMAL PROCEDURES**

#### **The disciplinary meeting**

If the Chair concludes that there is a case to answer, the Parish Council will appoint a staffing sub-committee of three councillors, to formally hear the allegations. The staffing sub-committee will appoint a chairman from one of its members. The Investigator shall not sit on the sub-committee.

No Councillor with direct involvement in the matter shall be appointed to the sub-committee. In the event that that leaves a vacancy on the sub-committee, the place will be filled by a Councillor from another parish. The Clerk will be invited, in writing, to attend a disciplinary meeting. The sub-committee's letter will confirm the following:

- the names of its chairman and other two members
- details of the alleged misconduct, its possible consequences and the Clerk's statutory right to be accompanied at the meeting

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- a copy of the information provided to the sub-committee which may include the investigation report, supporting evidence and a copy of this disciplinary procedure
- the time and place for the meeting. The Clerk will be given reasonable notice of the hearing so that he/she has sufficient time to prepare for it
- that witnesses may attend on the Clerk's and the Council's behalf and that both parties should inform each other of their witnesses names at least two working days before the meeting
- that the Clerk may be accompanied (for example, by another Parish Clerk or Union representative if he/she has one)

The purpose of the disciplinary meeting hearing is for the allegations to be put to the Clerk and then for the Clerk to give his/her perspective. It will be conducted as follows:

- the chairman will introduce the members of the sub-committee to the Clerk and explain the arrangements for the hearing
- the chairman will set out the allegations and invite the Investigator to present the findings of the investigation report (if there has been a previous investigation)
- the Chairman will invite the Clerk to present their account
- the Clerk (or his/her representative) will set out her case and present evidence (including any witnesses and/or witness statements)
- any member of the sub-committee and the Clerk (or his/her representative) may question the Investigator and any witness
- the Clerk (or companion) will have the opportunity to sum up

The Chairman will provide the Clerk with the sub-committee's decision with reasons, in writing, within five working days of the meeting. The Chairman will also notify the Clerk of the right to appeal the decision.

The disciplinary meeting may be adjourned to allow matters that were raised during the meeting to be further 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:

#### **First written warning**

If the Clerks' conduct has fallen beneath acceptable standards, a first written warning will be issued. 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/failure to improve will result in more serious disciplinary action
- the Clerk's right of appeal

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- that a note confirming the written warning will be placed on the Clerk's personnel file, that a copy will be provided to the Clerk and that the warning will remain in force for a specified period of time (e.g. 12 months).

### **Final written warning**

If the offence is sufficiently serious, or if there is further misconduct or a failure to improve sufficiently during the currency of a prior warning, the Clerk will be given a final written warning. A final written warning will set out:

- the reason for the final written warning, the improvement required (if appropriate) and the time period for improvement
- that further misconduct/failure to improve will result in more serious disciplinary action up to and including dismissal
- the Clerk's right of appeal
- that a note confirming the final written warning will be placed on the Clerk's personnel file, that a copy will be provided to the Clerk and that the warning will remain in force for a specified period of time (e.g. 12 months).

### **Dismissal**

The Council may dismiss:

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

The Council will consider very carefully a decision to dismiss. If the Clerk is dismissed, he/she will receive a written statement of the reasons for his/her dismissal, the date on which the employment will end and details of his/her right of appeal. If the sub-committee decides to take no disciplinary action, no record of the matter will be retained on his/her personnel file. Action taken as a result of the disciplinary meeting will remain in force unless it is modified as a result of an appeal.

### **Right to appeal**

In practice, in such a small Council, the decision of the Disciplinary Sub-committee having been arrived at through due process will be taken as final.

- In the event the Clerk wishes nevertheless to invoke his/her right to appeal, for example citing the failure of the Council to follow its own disciplinary procedure, to put forward sufficient evidence to support the disciplinary actions taken and decisions made, the Chairman of the Council will seek the legal counsel, the resources and the support of the Warwickshire Association of Local Councils and the intervention of Stratford District Council.
- If in the outcome the appeal against dismissal is upheld, the Clerk will be paid in full for the period from the date of dismissal and continuity of service will be preserved.