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**UPPINGHAM TOWN COUNCIL**

**DISCIPLINARY POLICY DRAFT**

1. This policy is based on the 2015 ACAS Code of Practice https://www.acas.org.uk/acas-code-of-practice-for-disciplinary-and-grievance-procedures/html. Wherever appropriate, the Council will try to resolve its concerns about employees’ behaviour informally, without starting the formal procedure set out below.
2. The policy will be applied fairly, consistently and in accordance with the Equality Act 2010.
3. This policy confirms that:
* the Council will fully investigate the facts of each case.
* the Council recognises that misconduct and unsatisfactory work performance are different issues. The disciplinary policy principally applies to misconduct issues.
* employees will be informed in writing about the nature of the complaint against them and given the opportunity to state their case.
* employees may be accompanied or represented by a trade union representative or a work colleague at any disciplinary or investigatory meeting. The companion is permitted to address such meetings, to put the employee's case and confer with the employee. The companion will not answer questions put to the employee, address the meeting against the employee’s wishes or prevent the employee from explaining his/her case.
* the Council will give employees reasonable notice of any meetings arising from this procedure. The employee must make all reasonable efforts to attend. Failure to attend any meeting may result in it going ahead and a decision being taken. An employee who does not attend a meeting will be given the opportunity to be represented and to make written submissions.
* if the employee’s companion is not available for the proposed date of the meeting, the employee can request a postponement and can propose an alternative date that is within five working days of the original meeting date.
* any changes to specified time limits in this procedure must be agreed by the employee and the Council.
* information about an employee’s disciplinary matter will be restricted to those involved in the disciplinary process. A record of the reason for disciplinary action and the action taken by the Council is confidential to the employee. The employee’s disciplinary records will be held by the Council in accordance with current data protection legislation.
* recordings of the proceedings at any stage of the disciplinary procedure are prohibited, unless agreed as a reasonable adjustment to take account of an employee’s medical condition.
* employees have the right to appeal against any disciplinary action.
* if an employee who is already subject to the Council’s disciplinary procedure raises a grievance, the grievance will normally be heard after the completion of the disciplinary procedure.
* disciplinary action taken by the Council can include an oral warning, written warning, final written warning or dismissal.
* except for gross misconduct when an employee may be dismissed without notice, the Council will not dismiss an employee on the first occasion that it decides there has been misconduct.
* if an employee is suspended following allegations of misconduct, it will be on full pay and only for such time as is necessary. Suspension is not a disciplinary sanction. The Council will write to the employee to confirm any period of suspension and the reasons for it.
* the Council may consider using mediation at any stage of the disciplinary procedure where appropriate (for example where there have been communication breakdowns or allegations of bullying or harassment), if both the Council and the employee consent.

**Examples of misconduct**

1. Misconduct is employee behaviour which can lead to the employer taking disciplinary action. The following list contains some examples of misconduct.
* 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 & safety rules.

**Examples of gross misconduct**

1. 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.
* bullying, discrimination or harassment
* incapacity at work because of alcohol or drugs
* violent behaviour
* fraud or theft
* gross negligence
* gross insubordination
* serious breaches of health & safety rules
* serious and deliberate damage to property
* use of the internet or email to access pornographic, obscene or offensive material
* disclosure of confidential information.

**Leadership of the disciplinary process**

1. The disciplinary process will be led by:
	1. the staffing committee, if the employee whose conduct is in contention is the Clerk. (The staffing committee will appoint a disciplinary sub-committee consisting of three councillors; this sub-committee will appoint a Chair from among its members. No councillor with direct involvement in the matter shall be appointed to the sub-committee.)
	2. the Clerk, if the employee whose conduct is in contention is not the Clerk. However, if the Clerk has him/herself been involved in the circumstances of the case in a way which means that (s)he cannot be seen as independent, then the Clerk must not lead the disciplinary process, which will instead be led by the staffing committee, as in clause a).

**Disciplinary investigation**

1. There will be an investigation of the facts by an Investigator independent from the circumstances of the case; this will normally be a councillor or senior member of staff. If there are no councillors or senior staff who are independent (for example, because they all have direct involvement in the allegations about the employee), an Investigator will be appointed from outside the Council. The Investigator will be appointed as soon as possible after the allegations have been made. The Investigator will be asked to submit a report within 20 working days of appointment, or sooner if possible. In cases of alleged minor misconduct, the appointment of an Investigator may not be necessary, and thus it may be decided to commence disciplinary proceedings at the next stage (see paragraph 12).
2. The employee will be notified in writing of the alleged misconduct, asking him/her to attend a meeting with the Investigator. The employee will be given at least five working days’ notice of the meeting with the Investigator so that he/she has reasonable time to prepare for it. The letter will explain the investigatory process and that the meeting is part of that process. The employee will be provided with a copy of the Council’s disciplinary procedure. The letter will also inform the employee that when he/she meets with the Investigator, he/she will have the opportunity to comment on the allegations of misconduct.
3. Employees may be accompanied or represented by a trade union representative or a work colleague at any investigatory meeting.
4. 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 endeavour to obtain it from them in advance of the meeting with the employee.
5. 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 of his/her findings. He/she will not be a member of any disciplinary sub-committee.
6. The leadership of the disciplinary process (see paragraph 6) will then decide as soon as reasonably possible whether:
	* the employee has no case to answer, and there should no further action under the Council’s disciplinary procedure, or
	* the matter is not serious enough to justify further use of the disciplinary procedure and can be dealt with informally, or
	* the employee has a case to answer and there should be action under the Council’s disciplinary procedure.
7. If it is decided not to take disciplinary action, it may be considered whether mediation would be appropriate in the circumstances.

**The disciplinary meeting**

1. If it is decided that there is a case to answer, the employee will be invited, in writing, to attend a disciplinary meeting; the following information will be included:
* the names of the sub-committee’s Chair and the other two members (if a sub-committee is leading the process), or confirmation that the Clerk will chair the meeting
* details of the alleged misconduct, and the employee’s statutory right to be accompanied at the meeting by either a trade union representative or a work colleague
* a copy of the Investigation report, all the supporting evidence and a copy of the Council’s disciplinary procedure
* the time and place for the meeting. The employee will be given reasonable notice of the hearing (at least ten working days) so that he /she has sufficient time to prepare for it.
* that witnesses may attend on the employee’s and the Council’s behalf, and that both parties should inform each other of their witnesses’ names at least five working days before the meeting.
* that all parties should provide each other with all supporting evidence at least five working days before the meeting. If witnesses are not attending the meeting, witness statements should be submitted to the other side at least five working days before the meeting.

15 The disciplinary meeting will be conducted as follows:

* The Chair of the meeting will set out the council’s case and present supporting evidence (including, if required, any witnesses).
* The employee (or the companion) will set out his/her case and present supporting evidence (including, if required, any witnesses).
* Any person present may question any witness.
* The employee (or the companion) will have the opportunity to sum up his/her case.
* The disciplinary meeting may be adjourned to allow matters raised during the meeting to be reviewed/investigated further.
* The Chair of the meeting will advise the employee in writing of the decision reached, with reasons, within five working days of the meeting.

**Disciplinary action**

1. If it is decided that there should be disciplinary action, it may be any of the following:

**Oral warning**

An oral warning is issued for most first instances of minor misconduct. The council will notify the employee:

* of the reason for the oral warning, the improvement required (if appropriate) and any time period for improvement
* that further misconduct/failure to improve will result in more serious disciplinary action
* of the right to appeal
* that a note confirming the oral warning will be placed on the employee’s personnel file, that a copy will be provided to the employee and that the warning will remain in force for six months.

**Written warning**

If there is a repetition of earlier misconduct which resulted in an oral warning, or in cases of different and more serious misconduct, the employee will normally be given a written warning. The written warning will set out:

* + the reason for the written warning, the improvement required (if appropriate) and any time period for improvement
	+ that further misconduct/failure to improve will result in more serious disciplinary action
	+ the employee’s right of appeal
* that a note confirming the written warning will be placed on the employee’s personnel file, that a copy will be provided to the employee and that the warning will remain in force for 12 months.

**Final written warning**

If there is further misconduct during the period of a written warning or if the misconduct is sufficiently serious, the employee 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 employee’s right of appeal
* that a note confirming the final written warning will be placed on the employee’s personnel file, that a copy will be provided to the employee and that the warning will remain in force for 18 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.
1. The Council will consider very carefully a decision to dismiss. If an employee 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.
2. Other action imposed as a result of the disciplinary meeting will remain in force for the timescales stated above unless it is subsequently modified as a result of an appeal. If it has been decided to take no disciplinary action, no record of the matter will be retained on the employee’s personnel file.

**The appeal**

1. An employee who is the subject of disciplinary action will be notified of the right of appeal. His/her written notice of appeal must be received by the Council within five working days of the employee receiving written notice of the disciplinary action, and must specify the grounds for appeal.
2. Possible grounds for appeal include:
	* Failure by the Council to follow its disciplinary policy
	* The disciplinary decision was not supported by the evidence.
	* The disciplinary action was too severe in the circumstances of the case.
	* New evidence has come to light since the disciplinary meeting.
3. The appeal will be heard by a panel of three members of the staffing committee who have not previously been involved in the case. (There may be insufficient members of the staffing committee who have not previously been involved. If so, the appeal panel will be a committee of three members of the Council who may include previously-uninvolved members of the staffing committee.) The appeal panel will appoint a Chair from among its members.
4. The employee will be notified, in writing, within 10 working days of receipt of the notice of appeal of the time, date and place of the appeal meeting. The employee will be advised that he/she may be accompanied by a companion, either a trade union representative or a work colleague.
5. At the appeal meeting, the Chair of the panel will:
	* explain the purpose of the meeting, which is to hear the employee’s reasons for appealing against the original disciplinary decision
	* explain the action that the appeal panel may take.
6. The employee (or his companion) will be asked to explain the grounds for appeal. Any member of the appeal panel may ask questions about those grounds.
7. The Chair of the panel will inform the employee that he/she will receive the decision and the panel’s reasons, in writing, within five working days of the appeal hearing.
8. The appeal panel may decide to uphold the original disciplinary decision, substitute a less serious sanction or decide that no disciplinary action is necessary. If it decides that no disciplinary action should be taken, no record of the matter will be retained on the employee’s personnel file.
9. If an appeal against dismissal is upheld, the employee will be paid in full for the period from the date of dismissal and continuity of service will be preserved.
10. The appeal panel’s decision is final.

This Policy was approved by Uppingham Town Council at its meeting on xxxx.