

Burwash Parish Council

Disciplinary Procedure – Adopted 08/03/16

Introduction

The Burwash Parish Council Disciplinary Procedure will be used only when necessary and as a last resort. Wherever possible, informal and/or formal counselling, or other good management practice, will be used to resolve matters prior to any disciplinary action being taken. The procedure is intended to be positive rather than punitive but recognises that sanctions may have to be applied in some circumstances.

An employee can discuss any part of this policy with any relevant Parish Councillor to help clarify their rights as well as give guidance and support where it may be needed. Employees have the right to representation at any point during the disciplinary process.

Suspension

1. Suspension is not disciplinary action. Suspension may be used when it is necessary to remove a member of staff from the workplace pending an investigation for example, to allow time for a 'cooling down period' for both parties, for their own or others protection, to prevent them influencing or being influenced by others or to prevent possible interference with evidence. Only the HR Committee has the authority to suspend an employee.
2. An employee suspended from duty will receive written confirmation within three days of:
 - a. the reason for the suspension
 - b. the date and time from which the suspension will operate
 - c. the timescale of the ongoing investigation
 - d. the right of appeal should the suspension last more than 7 days

Counselling

3. Counselling is an attempt to correct a situation and prevent it from getting worse without having to use the disciplinary procedure. Where improvement is required, the employee must be given clear guidelines as to:
 - a. what is expected in terms of improving shortcomings in conduct or performance
 - b. the time scales for improvement
 - c. when this will be reviewed
 - d. the employee must also be told, where appropriate, that failure to improve may result in formal disciplinary action.
4. A record of the counselling should be given to the employee and a copy retained in their personnel file. Once the counselling objectives have been met, any record of the counselling will be removed from the employees file.
5. If during counselling it becomes clear that the matter is more serious, then the discussion should be adjourned, and pursued under the formal disciplinary procedure.

Procedure for Formal Investigation

6. Formal investigations should be carried out by the most appropriate Councillor who is not directly involved with the incident being investigated. This Councillor may involve others to assist with the investigation process. All the relevant facts should be gathered promptly as soon as is practicable after the incident. Statements should be taken from witnesses at the earliest opportunity. Any physical evidence should be preserved and/or photographed if reasonable to do so.
7. A report should be prepared which outlines the facts of the case. This should be submitted to the HR Committee who will decide whether further action is required. Where appropriate, this report may be made available to the individual and their representative.
8. In most circumstances where misconduct or serious misconduct is suspected, the HR Committee will set up an investigatory hearing. This would be chaired by an appropriate Councillor. The investigating Councillor/s would be asked to present his/her/their findings in the presence of the employee who has been investigated. Witnesses should be called at this stage, and the employee (or their representative) allowed to question these witnesses. The employee has a right of representation at this hearing.
9. Following the full presentation of the facts, and the opportunity afforded to the employee to state his/her side of the case, the hearing should be adjourned, and everyone would leave the room except the HR Committee. They would discuss the case and decide which of the following option was appropriate:
 - a. take no further action against the employee
 - b. recommend counselling for the employee
 - c. proceed to a disciplinary hearing
10. All parties should be brought back, and informed as to which option has been chosen. Should the decision be taken to proceed to a disciplinary hearing, then this may follow on immediately from the investigatory hearing if the following criteria have been met:
 - a. the employee has been informed by letter that the investigation may turn into a disciplinary hearing, and that he/she has the right of representation
 - b. he/she has been told in advance what the nature of the complaint is, and had time to consult with a representative
 - c. all the facts have been produced at the investigatory hearing, and the HR Committee is in a position to decide on disciplinary action.
 - d. the chair of the HR Committee should inform the employee and their representative that the hearing will now become a formal disciplinary hearing, and invite them to say anything further in relation to the case.
11. It may be appropriate at this point to adjourn proceedings to enable arrangements to be made for a representative to attend the hearing at the request of the employee.
12. Should anyone who is subject to disciplinary action resign during the course of it, the action will cease unless there are extenuating circumstances which require it's continuance. The subject of the discipline may also request that the disciplinary action continue.

Warnings

Examples of Minor Misconduct:

- 13.** Below are listed examples of misconduct which may warrant either a Verbal Warning or a First Written Warning. It is stressed however that this list is not exhaustive and that on all occasions a full and proper investigation must take place prior to the issue of a warning.
- a. Persistent lateness and poor time-keeping.
 - b. Absence from work, including going absent during work, without valid reason, notification or authorisation.
 - c. Smoking within unauthorised areas.
 - d. Failure to work in accordance with prescribed procedures.
 - e. Incompetence.
 - f. Failure to observe Council regulations and procedures.

Verbal Warning

- 14.** A Verbal Warning is appropriate when it is necessary for the HR Committee to take action against an employee for any minor failing or minor misconduct.

First Written Warning

- 15.** A First Written Warning is appropriate when;
- a. a verbal warning has not been heeded and the misconduct is either repeated or performance has not improved as previously agreed.
 - b. an offence is of a more serious nature for which a written warning is more appropriate.
 - c. the recurrence or accumulation of an offence/offences, if left, will lead to more severe disciplinary action.

Examples of Gross – Misconduct

- 16.** Listed below are examples of misconduct which may be considered to be Gross Misconduct and may warrant a Final Warning, or Dismissal. It is stressed however that this list is not exhaustive and that on all occasions a full and proper investigation must take place prior to the issuing of a Final Warning, or Dismissal.
- a. Theft, including unauthorised possession of Parish Council property
 - b. Breaches of confidentiality, prejudicial to the interest of the Parish Council
 - c. Being unfit for duty because of the misuse/consumption of drugs or alcohol
 - d. Breach of confidentiality/security procedures
 - e. Physical assault, breach of the peace or verbal abuse
 - f. False declaration of qualifications or professional registration
 - g. Failure to observe Council rules, regulations or procedures
 - h. Wilful damage of property at work
 - i. Bribing or attempting to bribe another individual, or personally taking or knowingly allowing another person to take a bribe

Final Written Warning

17. A Final Written Warning is appropriate when:

- a. an employee's offence is of a serious nature falling just short of one justifying dismissal.
- b. an employee persists in the misconduct which previously warranted a lesser warning.

Dismissal

18. Dismissal is appropriate when

- a. an employee's behaviour is considered to be Gross Misconduct.
- b. an employee's misconduct has persisted, exhausting all other lines of disciplinary procedure.

Time Scales for the Expiry of Warnings

19. Warnings issued to employees shall be deemed to have expired after the following periods of time.

- a. Verbal Warnings: 6 months
- b. First Written Warnings: 12 months
- c. Final Written Warnings: 18 months (or as agreed and recorded at the hearing)

20. These time scales remain provided that during that period, no further warnings have been issued in respect of the employee's conduct.

Letter of Warning

21. All Warnings must contain the following information :

- a. The letter must be issued within 7 days of the date of the disciplinary hearing.
- b. The nature of the offence and where appropriate, that if further misconduct occurs, more severe disciplinary action will be taken.
- c. The period of time given to the employee for improvement.
- d. The employee's right to appeal to the HR Committee or Chairman of the Parish Council
- e. A copy of the warning and any supporting documentation must be attached to the individuals personnel file
- f. The employee must also receive a copy of the warning which in the case of any written warning will be sent to their home address by recorded delivery if not handed to them in person.
- g. In the case of a final written warning, reference must be made to the fact that any further misconduct will lead to dismissal, and that the employee has the right of appeal, and to who they can make that appeal.

22. The letter confirming dismissal will contain the following information:

- a. The reason for dismissal and any administrative matter arising from the termination of their employment.
- b. The employees right of appeal and to whom they should make that appeal

Appeals

- 23.** Employees have the right to appeal against the outcome of a disciplinary hearing. The basis of an appeal should normally relate to one of the following areas:
- a.** that the Parish Council's Procedure had not been followed correctly.
 - b.** that the resulting disciplinary action was inappropriate.
 - c.** that the need for disciplinary action was not warranted.
 - d.** that new information regarding disciplinary action has arisen
- 24.** An appeal should be put in writing to the HR Committee/Chairman of the Parish Council. The letter of appeal may be constructed by the employee or their representative. The letter should contain the grounds for appeal and should be lodged within 10 days of receipt of the warning/dismissal letter.
- 25.** An appeal will be arranged within 20 working days of receipt of the appeal letter or sooner if possible.

Appeals against Verbal and First Warnings

- 26.** In the case of verbal and first warnings, the appeal will be heard by the HR Committee and Chairman of the Parish Council.

Appeals against Final Warnings and Dismissal

- 27.** The hearing and determining of appeals against final warnings and dismissal will be heard by the appropriate Chairman plus at least two other Parish Councillors. They may also involve any other Councillor not previously involved with the case.
- 28.** When dealing with an appeal against a Final Warning or Dismissal written statements of case may be submitted no later than 2 days prior to the date of Appeal Hearing. No additional written evidence will be admitted by the Appeal Committee on the date of the Hearing.
- 29.** Witnesses may be required by either party at an appeal hearing, dependent upon the circumstances and nature of the case. However, there is no specific obligation on either party to produce a witness. Either party must give 5 days prior notice that they intend to call specific persons involved or associated with the case under consideration.
- 30.** It is the responsibility of the HR Committee and for the appellant to each arrange for the availability and attendance of any witness they wish to call.