



Brixworth Parish Council

Disciplinary Procedure

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<i>Documents/corporate/policiesandprocedures</i>	

1. Policy Statement

1.1 The purpose of the disciplinary policy and procedure is to set and maintain standards of conduct within Brixworth Parish Council, and in doing so, ensure that all employees are treated fairly and consistently. It is designed to help and encourage all employees to achieve and maintain satisfactory standards of conduct.

1.2 For newly appointed employees who are in their probationary period, Brixworth Parish Council retains the discretion to vary the procedure accordingly in respect of formal warnings, up to and including termination for a first breach of conduct rules.

1.3 The disciplinary procedure is normally only used where other interventions have failed to produce the required improvement or when the conduct matter is sufficiently serious to require immediate formal action.

2. References

2.1 The following policies are referred to in this document:

- capability policy and procedure;
- grievance policy and procedure;

3. Scope

This policy and procedure applies to all employees of Brixworth Parish Council.

4. Principles

4.1 Where appropriate, informal action will be considered before recourse to the formal procedure.

4.2 The procedure may be implemented at any stage if the employee's alleged misconduct warrants it.

4.3 All employees will be treated in line with Brixworth Parish Council's equality and diversity policy

4.4 For formal action, the employee will be told of the nature of the complaint and an investigation will normally be undertaken before any decision to hold a disciplinary hearing.

4.5 Employees may choose to be accompanied by a trade union representative or a workplace colleague throughout the formal stages of the procedure.

4.6 This procedure sets timescales to ensure that any disciplinary matter is dealt with quickly and efficiently. However, they may be extended in consultation with human resources to ensure a fair process.

4.7 Before a disciplinary hearing, employees will be provided, if available, with written copies of evidence and relevant witness statements.

4.8 An employee may appeal against any formal disciplinary action.

4.9 Audio/visual recordings of the proceedings are not acceptable at any stage of the disciplinary procedure and are not admissible within this process, unless agreed as a reasonable adjustment for an employee with a disability.

4.10 All information will be retained on a confidential basis.

4.11 Where the employee raises a grievance against any disciplinary action in relation to him/her, the grievance procedure is not normally available to the employee whilst the disciplinary matter is being considered, unless the investigating manager or chair decides that there are grounds for hearing the grievance first. Due consideration will be given as to whether in these particular circumstances the grievance should be dealt with before proceeding with the disciplinary matter and/or whether another line manager should deal with the disciplinary case. Where it has been decided to deal with the disciplinary matter first, any penalty from the disciplinary hearing is normally confirmed after the grievance has been heard.

4.12 Where the employee has taken out a grievance against the complainant and it has been decided to hear the grievance first, the formal letter of notification of a disciplinary hearing will be sent within five working days of the outcome of the grievance procedure. If, in light of the grievance outcome, it is decided not to proceed with the disciplinary hearing, the employee will be informed within five working days.

4.13 This policy and procedure is not appropriate for issues of capability or poor performance: where this occurs, the capability policy and procedure will be used.

5. Gross Misconduct

5.1 An allegation of gross misconduct is extremely serious and is not made lightly. Gross misconduct is regarded as a fundamental breach of contract that makes it impossible for Brixworth Parish Council to continue employing the employee. Where an employee is dismissed for gross misconduct, the dismissal is normally summary, i.e. without notice.

5.2 Examples of acts which may constitute gross misconduct include:

- (i) serious negligence which causes unacceptable loss, damage or injury;
- (ii) serious violation of health and safety rules;
- (iii) serious bullying or harassment as defined in the bullying and harassment policy and procedure;
- (iv) physical violence or intimidation;
- (v) deliberate and serious damage to property;
- (vi) theft, fraud, corruption and deliberate falsification of records;
- (vii) breach of the Bribery Act 2010 and any serious breach of the antibribery and anti-corruption policy;
- (viii) serious incapability whilst on duty brought on by consumption of alcohol or illegal drugs;

The above examples are neither exhaustive nor exclusive.

6. Representatives of recognised trade unions

6.1 Any investigation or disciplinary hearing involving a representative from a recognised trade union is normally notified to a full-time official of the union.

7. Criminal convictions and police involvement

7.1 The operation of the procedure is not necessarily delayed because an offence is under investigation by the police or because of any legal proceedings. The question in such cases is whether the employee's conduct warrants action because of its employment implications.

7.2 If an employee is charged with, or convicted of a criminal offence, this will not necessarily in itself be reason for disciplinary action. However, consideration will be given as to what effect the charge or conviction has on the employee's suitability to do their job, their relationship with Brixworth Parish Council, work colleagues, residents and other parties, and whether there is damage to Brixworth Parish Council's reputation.

The Procedure

8. Informal action

8.1 Informal action is appropriate in cases of minor misconduct.

8.2 The Clerk to the Parish Council will let the employee know that their conduct is unsatisfactory and make them aware of the standards expected without recourse to the formal procedure.

8.3 The Clerk to the Parish Council will hold a confidential discussion with the employee and ensure that they understand exactly what is expected of them. This discussion will enable him/her to provide constructive feedback and the employee to express their views on the issue. Where a need for improvement is identified, the clerk will explain to the employee what needs to be done, within an agreed timescale and how the conduct will be reviewed within the agreed period. If the required achievements are not achieved or maintained, the matter will be dealt with formally. The manager should keep brief, confidential notes of any informal action.

9. Investigation

9.1 Before disciplinary action is taken, a full and thorough investigation into the allegation(s) will normally take place which takes into account any statements from witnesses or opinion(s) as appropriate.

9.2 The purpose of the investigation is to determine whether there is a case to answer at a formal disciplinary hearing.

9.3 Where the chosen course of action is a disciplinary hearing, the chairman of the Parish Council will lead the investigation.

9.4 Proceedings are treated in confidence and records are kept as confidential as is practically possible and as is consistent with achieving a fair and thorough investigation.

9.5 Following the investigation, consideration will be given as to whether:

- the matter is closed; or, if further action is required :
- attempts should be made to resolve the matter informally without recourse to a formal hearing; or, if:
- a disciplinary hearing needs to be arranged.

The employee will be informed of the decision within five working days, unless there is justifiable reason for delay. The employee will be notified of any delay.

Formal action – disciplinary hearing

10.0 Arranging the hearing

10 The chair of the hearing will arrange a formal hearing, ensuring the following:-

i) the employee is told in writing, no fewer than five working days in advance of the disciplinary hearing (unless an earlier date has been mutually agreed);

ii) Written notification will include:

- a) the specific nature of the issue;
- b) the date, time and place of the formal hearing;

- c) that the employee may be accompanied by a trade union representative or workplace colleague at the hearing;
- d) the names of any witnesses and those in attendance at the hearing;
- e) a link to the disciplinary policy and procedure and any written statements, reports and other evidence to be considered;
- f) that the employee may provide evidence and/or call witnesses to the hearing, and the need to ensure that any witnesses are aware of the need for confidentiality.

iii) all documentation relating to the disciplinary hearing must be reasonable and submitted at least 36 hours prior to the hearing to the chair. The number of witnesses and any supporting documentation must be in proportion to the level of misconduct itself and must be of a reasonable quantity. The chair reserves the right to refuse an unreasonable quantity of documentation or number of witnesses;

iv) if a new matter that the employee is unaware of is raised at the disciplinary hearing, the employee will have 48 hours after the hearing to submit any additional documentation to the chair for consideration as part of the decision making process.

v) a note taker will normally attend.;

vi) appropriate arrangements will be made to meet any special needs (e.g. interpreting in the case of language difficulties of the employee).

10.2 The employee, and any representative, should make every effort to attend the hearing. However, if it is not reasonable for the meeting to be held at the proposed date and time, the hearing may be deferred by up to five working days from the date originally proposed.

10.3 If the employee fails to attend the hearing without good cause, a decision may be taken in his/her absence based on the information available.

11 The disciplinary hearing

11.1 In addition to the chair, those in attendance at the disciplinary hearing will normally include the person who conducted the investigation and a note taker, with witnesses, as appropriate.

11.2 The chair will explain the issue and go through the evidence gathered during the investigation, including any evidence given by witnesses appearing in person. The employee will be allowed to set out their case and answer any allegations that have been made. The employee will also have a reasonable opportunity to ask questions, present evidence, call relevant witnesses and be able to raise points about any information provided by witnesses.

11.3 The outcome of the hearing is normally communicated to the employee within five working days, unless agreed otherwise.

12. Levels of disciplinary action following hearing

12.1 After consideration of all factors, including any mitigating circumstances, the possible outcomes are as follows:

12.2 Written warning. A written warning is given if the seriousness of the misconduct is such that the matter cannot be suitably dealt with through informal means. This is in writing and details the complaint and the improvement required, with timescales. The warning will inform the employee that a final written warning will be considered if there is no sustained satisfactory improvement or change.

A copy of the written warning is kept on file but is disregarded for disciplinary purposes after six months of satisfactory conduct.

12.3. Final written warning. A final written warning is given if the offence is sufficiently serious or if there is an unspent warning already on file. It gives details of the complaint and the improvement required, with timescales. The warning also states that if there is any further misconduct, or if following review, there is continued unsatisfactory conduct the employee is likely to be dismissed. A copy of the final written warning is kept on file, but is disregarded for disciplinary purposes after twelve months of achieving and sustaining satisfactory conduct.

12.4 In circumstances where an employee's conduct is satisfactory throughout the period a warning is in force, but lapses very soon thereafter, or there is evidence of a pattern of both satisfactory and unsatisfactory conduct depending on whether a warning is in force, this will be taken into consideration in deciding how long any future warning should last.

13. Dismissal

13.1 The chair of the disciplinary hearing will report of all relevant facts leading to a recommendation for dismissal in confidence to the full Parish Council

13.2 Dismissal may be recommended if:-

- i) the employee is found to have committed an act of gross misconduct;
- ii) following review there is continued unsatisfactory conduct.

13.3 Dismissal is either without notice i.e. summary dismissal for gross misconduct or with contractual notice for all other dismissals.

13.4 Where a recommendation for dismissal is made, the chair of the Parish Council or nominee will normally offer to meet with the employee concerned before making a decision, if the employee so chooses. The employee may choose to be accompanied by a workplace colleague or trade union representative at this meeting. The chair after due consideration, may implement the dismissal.

14. Appeals

Action short of dismissal

14.2 To appeal against disciplinary action short of dismissal, the employee must write to the chair of the hearing within ten working days of receipt of the letter informing them of the outcome of their hearing, stating clearly the specific grounds of appeal.

14.3 The appeal will be arranged as soon as practicable.

14.4 The employee receives notice, in writing, five working days in advance of the hearing. The letter will state the date, time and place where the hearing is held and the name of person chairing the hearing. The employee will be informed that they may choose to be accompanied by a trade union representative or a workplace colleague. All documentation related to the appeal must be submitted to the chair at least 36 hours prior to the hearing, failure to do so, may mean that relevant documentation is not considered at the appeal

14.5 The chair may reach the following decisions:

a) uphold the disciplinary action or; b) remove the disciplinary action entirely or; c) impose a disciplinary action of their own, short of dismissal, which they consider appropriate.

14.6 The decision of the chair will be confirmed in writing within five working days of the appeal hearing.

14.7 The decision of the chair is final.

Appeals against dismissal

15.1 Where a decision to dismiss is taken, the employee may appeal within ten working days to the Parish Council.

15.2 Appeals against dismissal are heard by three appointed Parish Councillors. In the case of appeals against dismissal, the decision to dismiss shall not take effect until the appeal panel has determined the outcome of any appeal, unless the recommendation is for gross misconduct is upheld with a recommendation of summary dismissal.

15.3 The appeal process is a review of the decision to dismiss based on one or more of the following grounds:

- i. that new evidence is available which was not presented at the original hearing;
- ii. the dismissal hearing was materially flawed on procedural grounds;
- iii. the decision to dismiss was not reasonable in the circumstances

15.4 An employee wishing to appeal against a decision to dismiss must, within five working days of receipt of written notice of dismissal, send written notice of intention to appeal to the clerk of the Parish Council.

15.5 The employee must within a further five working days send to the clerk an outline statement setting out the basis of the appeal, together with the names and addresses of any witnesses to be called by the employee and new evidence (if any) for the appeal hearing.

15.6 The clerk shall provide a summary factual statement of the events leading to dismissal, and the written reason for dismissal. The clerk will, as soon as possible, arrange an appeal hearing by the appeal committee and will give the employee not less than five working days' notice of the time and place of the appeal hearing. All parties involved in the appeal hearing will receive a copy of the notice of the appeal hearing, together with a copy of the employee's notice of appeal and related documents (if any); a summary factual statement of the events leading to dismissal; and the written reasons for dismissal.

15.7 The employee may choose to have a trade union representative or workplace colleague in attendance throughout the hearing. Members of the appeal committee shall at each stage of the appeal hearing ask questions of the employee and any witnesses who may be called by either party.

15.8 The employee may apply for a postponement of the hearing if he/she is unable to attend for reasons beyond his/her control, provided such application is made at the earliest possible opportunity and supported by documentary evidence including where relevant, a medical certificate. A decision may be taken in the absence of the employee if he/she fails to attend the hearing without good reason, and does not notify the board of governors of his/her intended non-attendance.

16. Suspension

16.1 Suspension is not automatic nor, in itself, disciplinary action.

16.2 An employee may be suspended, while an issue of misconduct is being investigated, in the following circumstances:

- a) where they are accused of an act of gross misconduct;

- b) when it is deemed necessary to remove them from the workplace to aid the investigation;
- c) where it is considered to be part of Brixworth Parish Council's duty of care to the employee(s) involved.

16.3 Where a suspension is considered necessary, authorisation to suspend will be sought from the Chair of the Parish Council

16.4 Suspension will be confirmed in writing, setting out the grounds on which the decision to suspend has been taken. All suspensions shall be with full pay and suspended employees will be kept informed of the progress of their case by the officer who was appointed to investigate the suspension.