



# **BRECKLAND COUNCIL CONSTITUTION**

## **Part 8 DISCIPLINARY CODE FOR OFFICERS**

# 8 - DISCIPLINARY CODE FOR OFFICERS

## 1. Purpose of the procedure

This procedure has been agreed by the Council and Unison and sets out the action which will be taken to encourage improvement in individual conduct and performance or when rules are breached. It follows the principles recommended by the Advisory, Conciliation and Arbitration Service (ACAS) and exceeds the minimum standards outlined in the Employment Act 2002.

## 2. Who is covered?

This procedure does not apply to:

- The Chief Executive and officers covered by JNC for Chief Officers of Local Authorities
- Self employed and agency workers
- Termination of temporary or fixed term employment for which an employee has been specifically engaged
- Redundancy

This procedure shall be applied in conjunction with the National Conditions of Service.

## 3. Standards

The Council requires all employees to adhere to and follow certain standards of performance and behaviour including those laid out in:

- Council policies, such as the Code of Conduct for Employees, the health and safety policy the interim policy on the use of internet services for officers, flextime scheme and the violence and aggression policy
- Statutes such as the Data Protection Act 1998 and the Race Relations Act 1976.

## 4. Principles

If you are subject to disciplinary action, the Council will

- Seek to establish the facts quickly and deal consistently with disciplinary issues without unnecessary delay
- Investigate before disciplinary action is taken
- Advise you of the nature of the complaint at every stage
- Give you the opportunity to state your case and be accompanied to meetings by an appropriate person e.g. the representative of a recognised trade union, a colleague, friend or relation (not acting in a professional capacity).
- Not dismiss you for a first breach of discipline except in the case of gross misconduct, when the penalty will normally be dismissal without notice and without pay in lieu of notice
- Give you a right to appeal against any disciplinary action taken against you (except a first stage (verbal) warning).

## 5. Investigation

If you are not meeting the standards required by the Council, an investigation may be undertaken to decide whether disciplinary action should be taken. A suitable officer will investigate the situation, taking into account the statements of any available witnesses.

You will be notified in writing that an investigation is being undertaken and given an opportunity to meet with the investigating officer. You can attend the meeting with a representative of a recognised trade union, a colleague, friend or relation (not acting in a professional capacity).

The investigating officer will decide whether to drop the matter, arrange informal coaching or use the disciplinary procedure. This decision will be confirmed to you in writing.

## **6. Informal discussions/coaching**

The Council recognise that in many cases an informal word may improve performance. If the investigating officer decides the issue can be resolved informally, the formal disciplinary procedure will not be followed and you will receive coaching, counselling or training. Your performance will be monitored and reviewed and you may be set reasonable targets and timescales to improve. A note of the action taken will be recorded on your personal file and an informal verbal warning may be recorded.

If this fails to bring about the desired improvement, the formal disciplinary procedure will be followed.

## **7. Suspension and transfer**

Whilst the investigation or disciplinary procedure is conducted, you may be suspended with pay or transferred to other duties if it is felt that you should not be at work. Suspension or transfer is not disciplinary action and does not imply any criticism. If you are suspended or transferred, restrictions may be made on whom you can contact. Any restrictions imposed during a suspension will be detailed in the letter of suspension.

## **8. Formal disciplinary procedure**

If the investigating officer decides there is a case to answer under the formal disciplinary procedure, you will be asked to attend a hearing.

## **9. Hearing**

You will be informed in writing of the date, time and place of the hearing. You must take all reasonable steps to attend the hearing. If for any reason the date is not suitable, you should advise Human Resources of an alternative time when you are available. This should normally be within 5 working days of the original date.

Before the hearing you will receive details of the allegations made against you. You will have adequate time to consider the allegations before the hearing and an opportunity to respond to the allegations during the hearing. You have the right to be accompanied to the hearing by a representative of a recognised trade union, a colleague, friend or relation (not acting in a professional capacity). Your companion can give you advice and support and address the hearing but may not answer questions on your behalf.

A model Hearing Procedure is attached at Appendix B.

After the chairperson has heard the allegations, your response and any evidence, they will decide whether to take no further action, recommend training or coaching or give you a disciplinary warning and/or disciplinary penalty.

Formal disciplinary warnings can be given at the following stages:

- a. first stage                      (verbal warning)
- b. second stage                   (written warning)
- c. third stage                     (final written warning)
- d. fourth stage                   (dismissal)

If you are found to have committed a minor breach of discipline, you are likely to receive a warning at the first or second stage. If you have received previous warnings regarding a similar matter or if you have committed a more serious offence, a higher stage warning will be given.

If you belong to a recognised trade union, your union representative will be formally informed if you receive a warning of stage 3 or above. Warnings at stage 3 or above will be authorised by a Portfolio Manager or the Chief Executive in consultation with a senior member of the HR team.

Dismissal will only be enforced if you have a previous warning or commit gross misconduct (see below).

## **10. Warnings**

A warning (including a verbal warning) will be recorded on your personal file. All sanctions at the second stage or above will be confirmed by letter, normally within 10 working days of the hearing. You will receive details of:

- the nature of the complaint(s)
- which stage the warning is at (e.g. second stage)
- the reason for the warning
- any disciplinary penalty (see below)
- any right of appeal (see below)
- the consequences if your performance does not improve or other disciplinary issues arise

A record of the disciplinary action and warning will be kept on your staff file. If after 12 months, your service has been satisfactory and there have been no further disciplinary issues, the warning will be disregarded in any future disciplinary action.

## **11. Disciplinary penalties**

In addition to a warning, you may receive a disciplinary penalty. This may be one (or more) of the following, although this list is not exhaustive.

- Suspension on less than normal pay for up to two weeks
- Relegation
- Dismissal with notice
- Dismissal without notice
- Transfer to other duties and/or place of work
- Withholding of annual increments

## **12. Gross misconduct**

If at the hearing, the chairperson decides that you have committed gross misconduct, the normal consequence will be dismissal. Examples of actions that are gross misconduct are given in appendix A. If you commit gross misconduct, you can be dismissed without notice or payment in lieu of notice, even if you have no previous disciplinary warnings. A decision to dismiss will be taken only after full investigation and a hearing.

The power of dismissal lies with the Chief Executive who can delegate this to an appropriate manager.

## **13. Appeals**

If you receive a first stage verbal warning, you do not have a right to appeal.

If you are issued with a warning (other than a first stage verbal warning), you can appeal against the decision or any disciplinary action taken against you. You must appeal in writing to the Human Resources Manager within ten working days of the decision being communicated to you. Appeals against a second or third stage warning will be heard by the

Chief Executive. Appeals against dismissal will be heard by the Licensing and Appeals Sub-Committee.

Appeals will be heard (using the Council's Employee Appeals Procedure) as impartially as possible and should any disciplinary warning or penalty be withdrawn, reference to disciplinary action will be removed from your personal file.

#### **14. Data protection and record keeping**

Records of disciplinary hearings will be kept confidentially on personal files in accordance with the Data Protection Act 1998. This record will be the official record. Meeting records may be provided to the individual concerned although in certain circumstances some information may be withheld, for example to protect a witness.

#### **15. Colleagues asked to attend a disciplinary hearing**

You may be asked to attend an investigatory or disciplinary meeting with a colleague whose performance or conduct has been challenged. No pressure will be placed on you if you do not wish to accompany your colleague and you will not be penalised in any way for agreeing or declining to attend the meeting. Accompanying a colleague is a serious responsibility and if you decide to go to the hearing, you will be granted reasonable time off with pay to fulfil this duty and review the case with your colleague before and after the hearing.

#### **16. Recognised trade union representatives**

No disciplinary action beyond a verbal warning will be taken against a union official or staff representative until the circumstances of the case have been discussed with a senior representative or full time official of the union concerned.

## Gross misconduct

The following actions are likely to be gross misconduct. This list is not exhaustive.

- theft
- fraud, intention to defraud or deliberate falsification of documents including time sheets, bonus sheets, travelling and subsistence allowance or overtime claims
- abuse of entitlements (e.g. relocation packages, leave allowances)
- serious breach of confidentiality or the data protection code of practice (except in relation to the Public Interest (Disclosure) Act 1998)
- actual or threatened physical violence on another person
- deliberate damage to property
- sexual or racial harassment
- being unfit for work through alcohol or non-prescription drugs
- gross negligence or professional negligence
- breach of health and safety rules or the equal opportunities policy
- gross insubordination (e.g. refusal to obey a lawful instruction)
- serious breach of the Council's Code of Conduct for employees.
- serious breach of the Council's internet or e-mail policy

In exceptional circumstances, actions taken outside your employment may be considered gross misconduct or lead to disciplinary action. The main consideration will be whether the action makes you unsuitable for your type of work or unacceptable to other employees.

**Model Hearing Procedure**

The disciplinary officer conducting the disciplinary hearing will be accompanied by a Senior member of the Human Resources team. The disciplinary officer should not normally be the officer who conducted the original investigation.

The employee has the right to be accompanied by a representative of a recognised trade union, a colleague, friend or relation (not acting in a professional capacity).

There should also be someone present to act as official note take, this is likely to be another member of the Human Resources team.

- (a) The disciplinary officer will explain the purpose of the hearing and will introduce those present;
- (b) The employer's representative will state the case against the employee.
- (c) The employee or his/her representative shall be given an opportunity to ask questions of the employer's representative.
- (d) The employer's representative may call witnesses. The details of these witnesses should have been communicated to the employee prior to the disciplinary hearing.
- (e) The employee or his/her representative shall have the opportunity to question any witnesses called by the employer's representative.
- (f) The disciplinary officer may ask questions for clarification of the employer's representative and any witnesses.
- (g) The employer's representative may re-examine the witnesses.
- (h) The case for the employee shall be put by the employee or his/her representative. The employee or his/her representative may call witnesses. Details of any witnesses to be called must be given to the disciplinary officer at least five days prior to the hearing.
- (i) The employer's representative will have the opportunity to ask questions of the employee, his/her representative and of any witnesses called by the employee.
- (j) The disciplinary officer may ask questions for clarification of the employee, his/her representative and any witnesses called by the employee.
- (k) The employee or his/her representative may re-examine the witnesses.
- (l) The employer's representative will have the opportunity to sum up the case against the employee, but may not introduce any new material.
- (m) The employee or his/her representative will have the opportunity to sum up their case, but may not introduce any new material.
- (n) The employee, his/her representative, the employer's representative and all witnesses shall withdraw.
- (o) If recall is necessary, both parties are to return regardless of the point giving rise to doubt.

- (p) The disciplinary officer and the Human Resources representative will consider the case in private.

They must first decide whether on the balance of probabilities, taking due regard of all the facts, the case against the employee is proven.

If the case against the employee is proven, and before imposing a disciplinary penalty they must consider the following which would include any representations in mitigation from the employee or their representative.

- any special, mitigating circumstances which might make it appropriate to lessen the penalty;
  - the employee's disciplinary record, general record, age, position and length of service;
  - whether the proposed penalty is reasonable in view of all the circumstances;
  - the level of disciplinary penalty indicated by the procedure;
  - any previous precedents
- (q) If practicable the disciplinary officer shall inform the employee of the decision at the conclusion of the deliberation, but in any case shall provide written confirmation of the decision within five working days of the hearing.
- (r) The employee will be notified of his/her right of appeal and the procedure to be followed.

If at any time during the proceedings it becomes apparent that there is no case for the employee to answer, an immediate adjournment may be called by the employer's representative. The disciplinary officer will be responsible for dismissing the case.

If at any time during the proceedings it becomes apparent that further information or evidence is required, the hearing may be adjourned by the disciplinary officer and the hearing will be reconvened as soon as practicable.