

Disciplinary Policy

1. Purpose of the policy

To set out the action which will be taken to encourage improvement in individual conduct and performance or when rules are breached. It follows the principles set by the Advisory, Conciliation and Arbitration Service (ACAS) and the Employment Act 2002.

2. Who is covered?

This policy does not apply to:

- The Chief Executive, Operation Managers 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
- Retirement

Disciplinary Procedure

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

There is a separate Capability policy for instances where staff may be incapable of performing their roles at an acceptable standard by reference to skill, aptitude, health and or physical or mental quality.

3. Standards

The Council requires all employees to adhere to and follow standards of performance and behaviour as laid out in Council policies and legislation.

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 trade union.

Representation

Breckland Council is represented by Unison and The Employment Relations Act 1999 entitles staff to have the right to be accompanied by a trade union representative.

4. 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.

You will be notified in writing of the alleged conduct, that an investigation is being undertaken, and will be given an opportunity to meet with the investigating officer. You can attend the meeting with a representative of a recognised trade union, or a colleague willing to accompany you.

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.

5. Informal Discussions/Coaching

The Council recognises that in many cases an informal approach may improve performance. If the investigating officer decides the issue can be resolved informally, the formal disciplinary procedure will not be followed and you may receive coaching, counselling or training. A note of the action taken will be recorded on your personal file for 12 months and an informal verbal warning may be recorded.

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

6. 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.

7. 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.

8. 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 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 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 or a colleague (willing to accompany to you). Your companion can give you advice and support and address the hearing but may not answer questions on your behalf.

After the Presiding Officer 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/action (including dismissal) 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)

Warnings

A warning (including a verbal warning) will be recorded on your personal file for 12 months. 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.

9. Disciplinary penalties

In addition to a warning and other disciplinary action, 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
- Dismissal with notice
- Dismissal without notice
- Transfer to other duties and/or place of work
- Withholding of annual increments

10. Gross misconduct

If at the hearing, the Presiding Officer decides that you have committed gross misconduct, the normal consequence will be dismissal. 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. Actions likely to be classed as gross misconduct are listed in Appendix A. This list is not exhaustive.

11. Appeals

If you are issued with a warning or are dismissed you can appeal against the decision. You cannot appeal against a verbal warning. You must appeal in writing to the Human Resources Manager within five working days of the decision being communicated to you.

You will be informed in writing of the date, time and place of the appeal 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 be within 5 working days of the original date.

Where reasonably practical, the appeal hearing will be dealt with by a more senior manager (or different manager) than attended the original hearing.

You have the right to be accompanied at the appeal hearing by a representative of a recognised trade union or a colleague (willing to accompany to you). Your companion can give you advice and support and address the appeal hearing but may not answer questions on your behalf.

After the appeal meeting you will be informed of the final decision. Should any disciplinary warning or penalty be withdrawn, reference to disciplinary action will be removed from your personal file.

The appeal hearing need not take place before the dismissal or disciplinary action takes effect.

12. 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.

13. Colleagues asked to attend a disciplinary hearing

You may be asked to attend an investigatory or disciplinary meeting either as a companion or as a witness. Employees will be granted reasonable time off with full pay to fulfil this duty.

APPENDIX A

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.

APPENDIX B

Model Hearing Procedure

The Presiding Officer conducting the disciplinary hearing will be accompanied by a member of the Human Resources team. The Presiding 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 or a colleague who is willing to accompany them.

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

The Presiding Officer will explain the purpose of the hearing and will introduce those present; The employer's representative will state the case against the employee.

The employee or his/her representative shall be given an opportunity to ask questions of the employer's representative.

The employer's representative may call witnesses. The details of these witnesses should have been communicated to the employee prior to the disciplinary hearing.

The employee or his/her representative shall have the opportunity to question any witnesses called by the employer's representative.

The Presiding Officer may ask questions for clarification of the employer's representative and any witnesses.

The employer's representative may re-examine the witnesses.

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 Presiding Officer at least five working days prior to the hearing.

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.

The Presiding Officer may ask questions for clarification of the employee, his/her representative and any witnesses called by the employee.

The employee or his/her representative may re-examine the witnesses.

The employer's representative will have the opportunity to sum up the case against the employee, but may not introduce any new material.

The employee or his/her representative will have the opportunity to sum up their case, but may not introduce any new material.

The employee, his/her representative, the employer's representative and all witnesses shall withdraw.

If recall is necessary, both parties are to return regardless of the point giving rise to doubt.

The Presiding 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

If practicable the Presiding 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.

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 Presiding 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 Presiding Officer and the hearing will be reconvened as soon as practicably possible.