

# Horningsea Parish Council

## DISCIPLINARY PROCEDURE

### 1. PURPOSE AND SCOPE

This procedure is designed to help and encourage all Council employees to achieve and maintain high standards of conduct whilst at work or representing the Council. The aim is to ensure consistent and fair treatment for all.

This procedure is prepared in accordance with the dismissal and dispute resolution procedures as set out in the Employment Act 2008 and the Acas Code of Practice on disciplinary and grievance procedures.

### 2. PRINCIPLES

1. No disciplinary action will be taken against an employee until the case has been fully investigated.
2. At every stage in the procedure the employee will be advised of the nature of the complaint against him/her and will be given the opportunity to state his/her case before any decision is made.
3. At all formal stages, the employee will have the right to be accompanied by a trade union representative or work colleague during the disciplinary interview.
4. No employee will be dismissed for a first breach of discipline except in the case of gross misconduct when the penalty of dismissal without notice or payment in lieu of notice may be applied.
5. An employee will have the right to appeal against any disciplinary penalty imposed.
6. The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action.

### 3. THE PROCEDURE FOR MISCONDUCT OR GROSS MISCONDUCT

**3.1.1** The following list provides examples of **misconduct** which will normally give rise to formal disciplinary action:

- Unauthorised absence from work
- Poor time keeping
- Breaches of Health and Safety rule or procedures
- Failure to perform your job to the expected standard
- Inappropriate behaviour
- Misuse of Council facilities (Telephones, Computers, Email etc.)
- Refusal to carry out reasonable requests/instructions
- Failure to follow agreed Council procedure.

This list is not exhaustive, and offences of a similar nature will result in disciplinary action being instigated.

**3.1.2** The following list provides examples of offences which are normally regarded as **Gross Misconduct**:

- Theft, fraud, deliberate falsification of records, or acts of dishonesty.
- Fighting/assault on another person.
- Deliberate damage to property of the Council or its workers/members.
- Gross incompetence in the conduct of work.
- Gross negligence which results in the Council or employees being put at risk.
- Being under the influence of drugs or alcohol.
- Acts of discrimination, harassment or victimisation for example, race, age or sexual orientation.
- Serious acts of insubordination.
- Serious breaches of Data protection/GDPR
- Serious breach of the Council's Security Policy, Health & Safety Policy, Confidentiality or e-mail and Internet Policy.
- Any action (on or off the premises), that is likely to or does bring the Council into disrepute.
- Serious negligence which causes or might causes significant loss, damage, or injury.
- Accepting bribes or incentive payments.

This list is not exhaustive and other offences of a similar nature will result in disciplinary action being instigated at Gross Misconduct level which carries a potential penalty of dismissal. Gross Misconduct is generally any conduct which places extreme pressure on the mutual trust which exists in an employment relationship.

### **3.2 Informal Actions**

Minor misconduct may be dealt with informally, usually in a confidential one-to-one meeting between the employee and the Council. In the case of the Clerk being the individual against whom there is a complaint or allegation the matter should be handled discreetly by the chair. However, where the matter is more serious or informal action has not brought about the necessary improvement the following procedure will be used.

### **3.3. Investigations**

The Council may appoint an independent advisor to support the process including attending all meetings and be responsible for maintaining written records of the nature of the discipline issue raised, the Council's response, action taken (with reasons), details of any appeal and subsequent developments to be retained and kept.

All Investigations relating to employees of the Council will be carried out by the Clerk or in the case of the Clerk being disciplined, the chair and vice chair.

### **3.4 Formal Actions**

The level of warning the employee may receive for (gross) misconduct will depend on how serious the Council considers the alleged actions to be and their previous conduct in all the circumstances. In the event of alleged gross misconduct, the formal process may commence at Stage 3 –see 3.5 below.

### **3.4.2 Disciplinary Letters**

If there is a concern about an employee's conduct or behaviour, then a letter will be given to the employee advising him/her of the allegation(s) and reasons why this is unacceptable. The letter should invite the employee to attend a meeting at which the alleged misconduct will be discussed and will inform the employee of their right to be accompanied to the meeting. The letter will specify at which stage the disciplinary procedure is being invoked (see 3 stages below) and if invoked at Stage 3 for Gross Misconduct the letter will warn that a potential outcome could be dismissal. Any documents to be produced at the meeting will also be provided.

### **3.4.3 Disciplinary Meetings**

#### **ALL DISCIPLINARY MEETINGS WILL BE CONDUCTED BY CHAIR AND VICE CHAIR.**

The time and location of a disciplinary meeting should be agreed with the employee and it should be held in a private location with no interruptions. This may be without undue delay but allowing the employee to prepare their case within five days of the letter being sent, where practically possible. At the meeting, the Clerk (or in the case of the Clerk being disciplined, the chair and vice chair will state the complaint against the employee and go through the evidence which has been gathered. The employee will also be allowed to ask questions, present evidence, and call witnesses if advance notice has been given that they will do so.

If the employee is unable to attend the meeting due to unforeseeable reasons out of their control (e.g., illness), then the Council will reasonably rearrange the meeting. However, if the employee fails to attend the meeting without good reason the meeting can be held in their absence.

### **3.5 Outcomes and Penalties**

#### **Stage 1 – FIRST WARNING**

If conduct or performance is unsatisfactory, the employee will be given a **written warning** or **performance note**. Such warnings will be recorded but disregarded after 6 months of satisfactory service. The employee will also be informed that a final written warning may be considered if there is no sustained satisfactory improvement or change. (Where the first offence is sufficiently serious, for example because it is having, or is likely to have, a serious harmful effect on the Council, it may be justifiable to move directly to a final written warning.)

#### **Stage 2 – FINAL WRITTEN WARNING**

If the offence is serious, or there is no improvement in standards, or if a further offence of a similar kind occurs, a final written warning will be given which will include the reason for the warning and a note that if no improvement results within 6 months, action at Stage 3 will be taken.

### **Stage 3 – DISMISSAL OR AN ACTION SHORT OF DISMISSAL**

If the conduct or performance has failed to improve, the employee may suffer demotion, disciplinary transfer, loss of seniority (as allowed in the contract) or dismissal.

### **3.6 Suspension**

If the employee is accused of an act of gross misconduct, they may be suspended from work on full pay while the Council investigates the alleged offence. Only the chair and vice chair in joint agreement have the power to suspend. This enables a swift and thorough investigation to occur. Whilst suspended pending disciplinary investigation regular contact with a nominated person at the Council will be maintained although access to premises, equipment or systems may be denied. The External Investigator who compiles evidence for the disciplinary hearing must play no part in the subsequent decision-making to ensure impartiality. The Council needs to consider the implications of such arrangements on its hearing and appeal panel plans early on in the disciplinary process.

### **3.7 Appeals**

The appeals stage of the disciplinary process is part of the Code of Practice to which an employee has a right. It can be exercised after any of the stages of disciplinary action for misconduct/poor performance or Gross Misconduct.

An employee who wishes to appeal against a disciplinary decision should inform the chair and vice chair in writing giving reasons for the appeal, who will consider the matter within five working days and respond in writing. An appeal may be raised if:

- The employee thinks the finding or penalty is unfair.
- New evidence has come to light.
- The employee thinks that the procedure was not applied properly.

Where possible the appeal will be heard by a panel acting on behalf of the Council Clerk, including two Councillors who have not been involved in the original disciplinary hearing conducted by the chair and vice chair, who will view the evidence with impartiality. The employee will have the right to be accompanied by a colleague or accredited official employed by a trade union or lay member at the appeal hearing. The outcome of the appeal and reasons for it will be advised to the employee as soon as possible after the meeting and be confirmed in writing. At the appeal hearing any disciplinary penalty imposed will be reviewed but it cannot be increased. The decision taken at the appeal hearing will be final.

### **3.8 The right to be represented**

At each formal stage of disciplinary interview an employee has the right to be accompanied and can make a reasonable request for such a person to accompany them. An employee can ask to be accompanied by a colleague or accredited official employed by a trade union or lay member, to give support and help them prepare for the disciplinary interview. This right is enshrined in the 1999 Employment Relations Act. As this is an internal process there is no provision to have any external person accompany or represent an employee e.g., partner, parent, solicitor etc. the companion can address the hearing and sum up the employee's case, respond on behalf of the worker to any views expressed at the meeting and confer with the employee. The companion cannot however answer questions on the employee's behalf or address the hearing if the employee does not wish him/her to or prevent the employee from explaining their case.

### **3.9 Grievances raised during Disciplinaries**

Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently.

### **3.10 Criminal charges or convictions**

If an employee is charged with or convicted of a criminal offence this does not automatically give rise to a disciplinary situation. Consideration needs to be given to how a charge or conviction may affect an employee's ability to undertake his/her job duties and their relationships with the Council, colleagues, or subordinates.