

GREAT YARMOUTH BOROUGH COUNCIL

LOCAL DISCIPLINARY PROCEDURE

PREAMBLE

- i. This procedure has been agreed with UNISON and applies to all Council employees (other than the Managing Director and Chief Officers who are covered by separate arrangements). The procedure takes account of the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- ii. Disciplinary matters will be conducted in accordance with the procedure and employees will have the rights of representation and appeal set out.
- iii. The procedure is produced in some detail and includes references to the more general rules covering such matters as time-keeping, conduct, honesty etc. and the likely outcome if these rules are broken. In addition each Department will have its own particular working rules with which employees should be acquainted.
- iv. The timescales identified in the policy are those which should, in normal circumstances, be adhered to. However, in exceptional circumstances, these timescales may be varied at management's discretion and in consultation with the employee.
- v. The press and public will be excluded from all hearings and details will remain confidential to the parties involved.
- vi. Disciplinary decisions (including dismissal) will normally rest with Senior Managers. For the purpose of this procedure, the term 'Senior Manager' shall encompass the Managing Director, officers subject to the Conditions of Service for Chief Officers of Local Authorities and Service Managers.
- vii. The procedure is intended to help promote fairness and order in the relationships between the Council and its employees.
- viii. General indications as to the type of misconduct, omission or, in certain situations, failure in performance that could lead to disciplinary action against employees are set out at Schedule A.
- ix. This procedure will be subject to review and, after consultation, may be revised.

1. SCOPE

- 1.1 This procedure is to be used in all cases where misconduct, omission or, in certain situations, failure in performance is such as to warrant disciplinary action.

2. EXCLUSIONS

- 2.1 This procedure does not apply where employment has been terminated in respect of redundancy, permanent ill-health and some forms of incapability.
- 2.2 In addition, day-to-day supervision of employees is outside the procedure's scope. For example, there will be occasions when it is appropriate for employees' deficiencies to be discussed with them as part of normal supervisory arrangements and without recourse to the formal procedures. In these circumstances employees will be given every opportunity to seek what help may be needed. By the very nature of these situations an employee will normally be unaccompanied. If the discussions fail to produce improvement employees will

be left in no doubt that the next step could be to formal disciplinary action being taken (see Section 4).

3. THE PROCEDURE IN OPERATION

- 3.1 In order to establish the need for disciplinary action it will normally be necessary to formally investigate a situation giving rise to concern. Employees, accompanied in accordance with paragraph 3.2(f), may be asked by the appropriate officer(s) to respond to questions raised with, or statements made to, them in connection with the preparation of papers for any formal disciplinary action that may prove to be necessary. If the employees are trade union officials (as statutorily defined) the matter will be discussed with their Branch Secretary or full-time officer before any such action is taken.

If it is necessary to suspend employees pending investigations and action, this will be at full pay (i.e. contractual entitlement). A decision to suspend will normally be made at the level indicated at (vi) of the Preamble. Where an employee, when suspended, is receiving less than full pay (or no pay at all) under the terms of his/her contract of employment that entitlement (or lack of it) of less than full pay shall continue during the period of suspension. Where there is a possibility of irregularity affecting the assets or interest of the Council, the Senior Manager must act in accordance with the Council's Anti-Fraud and Corruption Policy and Financial Regulations.

In addition, it may be necessary for the appropriate officer(s) to interview and take statements from witnesses and to request them to attend a subsequent disciplinary hearing in support of their evidence.

- 3.2 If disciplinary action is proposed employees will be informed in writing of
- a the nature of the misconduct, omission or, in certain situations, failure to perform;
 - b the date, time and place for any hearing (normally no less than three working days notice should be given):
 - c the name of the Senior Manager hearing the case;
 - d the name(s) of the officer(s) stating the case;
 - e the right to produce written statements. Any written statements produced by the parties shall be circulated to such parties and to the person hearing the case in advance of the hearing:
 - f the rights to state their case, to produce witnesses and to be represented at all stages by a trade union official or colleague of their choice. [If employees choose to attend unaccompanied they will be required to sign a statement to this effect.]
- 3.3 Although disciplinary hearings will be as informal as possible, a Senior Manager who has not been involved with the investigation (other than in exceptional circumstances) will hear the case along the general lines of the procedure at Schedule B.
- 3.4 All Written Warnings as a result of a hearing will be issued using the document shown at Schedule E. This should explain: -
- a the nature of the misconduct, omission or failure in performance;
 - b the stage reached in the procedure;
 - c what is expected for the future, any period not normally less than three months nor exceeding twelve months over which improvement must take place, including any review dates, and whom employees should contact if they need assistance;
 - d what will happen if the matter proceeds to the next stage;

e the appeal rights, the time limit thereon, and how the appeal should be made.

Employees will be required to sign and return a copy of any such document to acknowledge receipt.

- 3.5 The procedure provides for employees to try to improve their conduct or performance. Exceptions are cases of established gross misconduct (where unless there are exceptional circumstances dismissal without notice or pay in lieu of notice will take place) or incidents which make continued employment impossible because, for example, they create an irretrievable breakdown of trust between the Senior Manager and the employee (see paragraph 4.4), or where a Final Written Warning has been unsuccessful.
- 3.6 Where employees are subject to a probationary period of service, matters of capability, competence and general suitability for the job will be assessed in accordance with and at the various stages set down in the probationary scheme. Alternatively, it may be appropriate to deal with probationary employees for a disciplinary offence under this procedure rather than the probationary scheme. In such cases time-scales may be shortened to fit in with the probationary period.
- 3.7 If employees have personal/domestic difficulties, or if the problem is caused by something beyond employees' control, the Senior Manager will offer such assistance as they feel is appropriate in the circumstances.
- 3.8 If disciplinary action by a Senior Manager against employees is withdrawn all details of such action will be expunged from employees' personal files and the employees will be informed accordingly.
- 3.9 Except in the type of special circumstances defined below and which will be explained to employees and their representatives, breaches of disciplinary rules will be disregarded after the specified period for improvement (see paragraph 3.4). The effect of this provision is that usually an offence will be disregarded after a maximum of twelve months from the date of the Senior Manager's decision. However, exceptionally, a Senior Manager may wish at the outset to stipulate a longer maximum review period than twelve months because of the circumstances of the case. Employees may appeal against such a stipulation. Examples of special circumstances could include: -
 - (1) repeated breaches of the same or similar disciplinary rules, and
 - (2) as an alternative to dismissal when the situation is that serious.

4. **FORMAL STAGES**

- 4.1 **First Written Warning (First Formal Action)** - Where an employee's misconduct, omission or in certain situations failure in performance warrants formal disciplinary action, or where normal day-to-day management interventions have not brought about the necessary improvements in the employee's conduct or performance, a First Written Warning will be issued within seven calendar days of the hearing and will include the information required by sub-paragraphs (a) - (e) of paragraph 3.4. A First Written Warning shall be recorded within the employee's personal file.
- 4.2 **Final Written Warning** - Where an employee's misconduct, omission or, in certain situations, failure in performance gives further cause for concern, or where initially the matter is of a very serious nature but is considered short of gross misconduct, a Final Written Warning may be issued by a Senior Manager within seven calendar days of the hearing and will include the information required by paragraph 3.4. It will contain a clear indication that any further offence (subject to investigation) may lead to dismissal. A Final Written Warning shall be recorded within the employee's personal file. [In exceptional circumstances the Senior Manager may extend the terms of the final warning for a further specified period, normally for a maximum of 12 months.]

- 4.3 **Dismissal** - If the issuing of Written Warnings does not bring about stipulated improvements, the employee will be required to attend a further disciplinary hearing and, unless there are exceptional circumstances, will be dismissed subject to the appropriate notice period. Details of the reasons for dismissal and appeal rights will be included in the letter of dismissal, which will be issued within seven calendar days of the hearing.
- 4.4 Also, there may be serious incidents short of gross misconduct which make continued employment impossible because (for example) they create an irretrievable breakdown of trust between the Senior Manager and the employee. If after investigation (and on the balance of probabilities) this is established and the necessary trust between employer and employee is broken leading to a situation which, in the opinion of the Senior Manager, makes continued employment impossible, dismissal with notice may take place. See Schedule A, Page 2 - "Some reasons which may justify dismissal with notice" - for further information.
- 4.5 **Gross Misconduct** - Except in very exceptional circumstances, if the situation is considered sufficiently serious an employee will normally be suspended forthwith (which will be confirmed in writing) pending any necessary investigations. If a disciplinary hearing is subsequently held the provisions of paragraph 3.2 and 3.3 will apply. Except in exceptional circumstances, if after investigation and on the balance of probabilities gross misconduct is established, dismissal without notice or pay in lieu of notice will follow.

5. **APPEALS**

- 5.1 Employees have a right of appeal against any disciplinary decision notified to them.
- 5.2 Appeals against dismissal shall be to the Council's Appeals Committee. Appeals against Written Warnings shall be to a Head of Department, Executive Director or the Managing Director (but, in any event, not to the person who made the disciplinary decision being appealed against).
- 5.3 The employee must lodge their appeal, in writing, with the appropriate Senior Manager within fourteen calendar days of the date of the letter informing them of the decision.
- 5.4 Appeals against Written Warnings shall be considered by a Head of Department, Executive Director or the Managing Director, following as far as is practicable a procedure based upon the principles set out in Schedule C. Employees will have the same rights of representation as for disciplinary hearings. There will be no requirement to produce written case statements for such appeals.
- 5.5 Where the appeal is against dismissal, the Senior Manager will then notify Member Services who will make the necessary arrangements for the convening of the Appeals Committee (which is comprised of Elected Members).
- 5.6 Where the appeal is against dismissal, the appeals procedure is set out at Schedule C and employees will have the same rights of representation as for disciplinary hearings. The date of the hearing shall be no later than four weeks after the date of registration of the appeal. Parties to an appeal will be notified of the hearing date within fourteen calendar days of the registration of the appeal. Statements of Appeal/Case and a list of witnesses to be called must be received from both parties by Member Services no later than ten calendar days before the hearing date. A Case File incorporating such statements will be sent to the parties no later than seven calendar days before the hearing date. However, the time-scales in this paragraph may be varied by agreement of the parties.
- 5.7 The decision of the Appeals Committee is final within the Council's procedure.
- 5.8 If, as a result of an appeal or any other review, disciplinary actions by a Senior Manager against employees are withdrawn, all details will be expunged from employees' personal files and they will be informed accordingly.

- 5.9 Any appeal is not intended to be in substitution for, or prejudicial to, employees' rights of appeal to an Employment Tribunal. However, apart from initial registration, Employment Tribunals usually satisfy themselves that internal appeal procedures have been exhausted before they entertain cases referred to them.

6. TYPES OF DISCIPLINARY ACTION

- 6.1 Dependent on circumstances, disciplinary action on the part of the Council could result in:
- a a Written Warning indicating the improvement required and, where appropriate, the timescale for its achievement;
 - b the relegation/transfer of employees or the withholding of increments;
 - c allowing employees to resign (without duress and with clear advice as to the effect) whether or not upon the offer of alternative employment at a lower level;
 - d dismissal subject to notice;
 - e dismissal without notice.
- 6.2 In addition to disciplinary action as above, the Council will in certain cases seek recovery of monies or property due to it from employees.

7. PROVISION OF ADVICE

- 7.1 At all stages of this procedure Human Resources will provide, upon request, advice to the appropriate officer. In addition, employees may seek advice from Human Resources on the procedural aspects of a case.

**RESPONSIBILITIES AND OBLIGATIONS -
GENERAL RULES ON BEHAVIOUR AND CONDUCT**

GENERAL

1. The ACAS Code of Practice on Disciplinary and Grievance Procedures indicates that employees should be made aware of the type of behaviour or conduct that will result in disciplinary action against them.
2. As mentioned in the procedure, dismissals for redundancy, permanent ill-health and some forms of incapability are outside the scope of this document.
3. It is not possible to specify all forms of behaviour that will result in disciplinary action. Each case must be judged in the light of the circumstances surrounding it. Varying circumstances may well allow different disciplinary action to be taken for what are, basically, similar offences.
4. The following examples give a clear indication of the Council's position. Omissions from the examples are not, in themselves, grounds for appeal and the examples are not exhaustive. In addition employees should be acquainted with the working rules and procedures relating to their particular area of work. These may be in the form of manuals, notices, e-mails, periodic memoranda, etc.

SOME REASONS JUSTIFYING DISCIPLINARY ACTION

- Professional negligence, misconduct, omission or, in certain situations, failure in performance to a reasonable and acceptable standard (including breaches of the Council's Code of Conduct).
- Negligence in the care or custody of cash, stores or other property of the Council.
- Failure to disclose interest in Council contracts.
- Failure to obey the reasonable, lawful and proper instructions of a supervisor.
- Persistent lateness or absenteeism.
- General misconduct (e.g. bad or insolent behaviour, harassment, breaching the Council's Smoking Policy).

SOME REASONS WHICH MAY JUSTIFY DISMISSAL WITH NOTICE

As distinct from gross misconduct (see below) dismissal **with** notice, or with pay in lieu, will normally occur in situations where the various stages of the disciplinary procedure have been followed in response to persistent failures under one or more of the type of reasons listed above.

In addition, there may be circumstances which oblige the Council to give notice to terminate employment, e.g.

- Behaviour of a serious or criminal nature outside the employment with the Council the nature of which, in the opinion of the Senior Manager, makes continued employment impossible (attention is drawn to paragraphs 3.5 and 4.4 of the procedure).
- Where an essential car user or person employed as a driver loses their driving licence as a result of a criminal offence and is unable to carry out the duties of their job.

SOME REASONS WHICH MAY JUSTIFY DISMISSAL WITHOUT NOTICE (GROSS MISCONDUCT)

Actions of gross misconduct will normally result in dismissal without notice or pay in lieu of notice. The Council considers that the following actions come within this category:

- Deliberate falsification of time sheets, bonus sheets, travelling and subsistence claim forms or other documents whose completion would lead to a financial (or some other) benefit.
- Serious professional negligence, misconduct, omission or, in certain situations, failure in performance to a reasonable and acceptable standard (including serious breaches of the Council's Code of Conduct).
- Theft or misappropriation of cash or property belonging to the Council, fellow employees or persons in the care of the Council.
- Deliberate and wrongful disclosure of security passwords in connection with computers (and similar systems) and buildings.
- Unauthorised access to (computer) systems and information, including attempting to access.
- Serious cases of harassment.
- Serious cases of sexual/indecent misconduct.
- Serious offences concerning alcohol or drugs at the workplace.
- Threatened or actual physical assault on Elected Members, colleagues or members of the public; fighting or riotous behaviour at work and similar actions.
- Malicious damage to Council property.
- Actions endangering life and limb.
- Deliberately accessing internet sites containing pornographic, offensive or obscene material.

PROCEDURE FOR DISCIPLINARY HEARING

As stated at paragraph 3.3, hearings will be as informal as possible and employees will be afforded every reasonable assistance to put their case. The procedure will be along the following general lines:

Introduction - The officer presiding, who may be accompanied/assisted by an adviser, will introduce the parties.

The case for the employer - An opening statement may be made and as part of the presentation of the case witnesses may be called.

The employee will have the opportunity to ask questions after each witness has given evidence.

The officer presiding and the adviser may also ask questions.

The case for the employee - An opening statement may also be made and as part of the presentation of the case witnesses may be called.

The officer handling the case for the employer may ask questions after each witness has given evidence.

The officer presiding and the adviser may also ask questions.

Re-examination - Both parties will be asked if they wish to re-examine any evidence before they proceed to the next stage.

Final Statements - Both the officer handling the case for the employer and the employee (last) may make a final statement.

Adjournment - Either party may request an adjournment of the hearing at any stage.

Consideration of the case - All parties to the hearing will then withdraw.

The officer presiding, assisted by the adviser, will then deliberate. If it is necessary to recall either party or witness in order to clear up any point of uncertainty on the evidence given, both parties will be recalled notwithstanding the fact that only one may be concerned with the point giving rise to doubt.

Decision - The officer presiding will, if possible, give a decision to the parties immediately after the hearing, but in any case appropriate confirmation in writing will be given within seven calendar days.

Note: *References to 'employee' include any advocate acting on the employee's behalf.*

APPEALS PROCEDURE TO THE COUNCIL'S APPEALS COMMITTEE

Introduction - The Chairman of the Committee will introduce the members of the Committee, and the adviser, to the parties to the proceedings.

The Senior Manager's Case - The Senior Manager may make an opening statement and as part of the presentation of his/her case may call witnesses. New, relevant, evidence will be admissible.

The Appellant will have the opportunity to ask questions of the Senior Manager and any witnesses called after each witness has given evidence.

The Committee and the adviser may also ask questions.

The Appellant's Case - The Appellant may also make an opening statement and as part of the presentation of his/her case may also call witnesses. New, relevant, evidence will be admissible.

The Senior Manager will have the opportunity to ask questions of the Appellant and any witnesses called after each witness has given evidence.

The Committee and the adviser may also ask questions.

Re-examination - Both parties will be asked if they wish to re-examine any evidence before they proceed to the next stage.

Final Statements - Both the Senior Manager and the Appellant (last) may make final statements if they so wish.

Adjournment - Either party may request an adjournment of the hearing at any stage.

Consideration of the Case - All parties to the hearing will then withdraw.

The Committee, assisted by the adviser, will then deliberate. If it is necessary to recall either party or any witness to the hearing in order to clear up any point of uncertainty on the evidence given, both parties will be recalled notwithstanding the fact that only one may be concerned with the point giving rise to doubt.

Decision of the Committee - The Committee will, if possible, give their decision to the parties immediately after the hearing, but in any case such decision will be confirmed in writing within seven calendar days.

Notes:

- (i) *The order of presentation of appeals can be reversed by agreement of the parties so that the Appellant's case is presented first.*
- (ii) *References to "Appellant" and to "Senior Manager" are deemed to include advocates acting on their behalf.*

SCHEDULE D

SUMMARY OF MAJOR MATTERS AFFECTING EMPLOYEES UNDER THE DISCIPLINARY PROCEDURE

1. Informal counselling may precede formal disciplinary action (paras. 2.2 and 3.7).
2. Suspensions pending investigation will be at full pay, subject to the exception as indicated (para. 3.1).
3. Employees may produce witnesses at formal hearings and be accompanied/represented by a trade union official or colleague (paras 3.1 and 3.2).
4. All Written Warnings will be confirmed in writing setting out certain stipulated details (para. 3.4).
5. Probationary employees will normally be subject to specific reviews under the probationary scheme. However, certain disciplinary offences may be better dealt with under the disciplinary procedure (para. 3.6).
6. If an action is withdrawn details of the action will be expunged. Except in agreed special circumstances, breaches of disciplinary rules will be disregarded after the specified period of satisfactory conduct (paras 3.8 and 3.9).
7. The Written Warning steps consist of "First Written Warning ", and "Final Written Warning" (which can be extended), although of course serious offences may lead to the Final Written Warning stage immediately or even dismissal (paras 4.1 to 4.5).
8. An appeal right exists against any disciplinary decision (paras 5.1 and 5.2).
9. Procedural advice is always available to employees who may request a sight of relevant documents to the case (para. 7.1).
10. A summary of possible disciplinary' offences which could lead to (1) disciplinary action, (2) dismissal with notice, and (3) dismissal without notice is included (Schedule A).
11. Step-by-step procedures have been agreed for both (1) a disciplinary hearing, and (2) an appeal (Schedules B and C).

SCHEDULE E

Great Yarmouth Borough Council LOCAL DISCIPLINARY PROCEDURE – WRITTEN WARNING	
Employee's name:	
Department:	
Date(s) of offence:	
Date of Written Warning:	
Nature of misconduct, omission or failure in performance:	
This is a:	<input type="checkbox"/> First Written Warning <i>(First Formal Action)</i>
	<input type="checkbox"/> Final Written Warning
Nature of improvement required including timescale and, if appropriate, review dates:	
Officer to be contacted for assistance:	
What will happen if the matter proceeds to the next stage of the procedure?	
Right of Appeal:	You have the right of appeal against this Written Warning which you may exercise by notice, in writing, to the Senior Manager identified below within 14 days of the date it was issued
Any appeal should be notified to:	
Notification to Trade Union Official/Representative:	You may request the your Trade Union Official or other representative be given a copy of this Written Warning
Signature of Senior Manager issuing this Written Warning:	
Date:	
Acknowledgement:	I acknowledge receipt of this Written Warning. I wish / do not wish <i>(delete as appropriate)</i> that my Trade Union Official/Representative be given a copy of this document.
Signature of Employee:	
Date:	
Distribution:	The employee <i>(white copy)</i> ; Senior Manager <i>(yellow copy)</i> ; Human Resources <i>(pink copy)</i>