

## FROGMORE & SHERFORD PARISH COUNCIL

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### **POLICY & PROCEDURE: DISCIPLINE**

#### **PURPOSE:**

This procedure is designed to help and encourage employees to achieve and maintain standards of conduct, attendance and job performance.

The Council has a legal obligation to safeguard employee rights. With the aim of ensuring consistent and fair treatment concerning grievances, disciplinary matters and dismissal, this procedure sets out the steps that will be taken when disciplinary rules are breached.

It can also be applied to employee conduct issues that are brought to the attention of the Council by members of the public.

## **POLICY:**

### **1. Principles**

- 1.1 This document is written with reference to the ACAS Code of Practice 1, published in 2009
- 1.2 The disciplinary procedure that follows is designed to be fair and transparent to all and to ensure that an employee has the chance to put his/her side of the case where a disciplinary issue arises
- 1.3 Any breach by an employee of any of the terms of his/her employment, or other serious breach of contract, misconduct, inefficiency or neglect while carrying out his/her duties may be treated as a disciplinary matter.
- 1.4 Conduct outside working hours that, in our opinion, affects the performance of an employee's duties or may bring the Parish Council into disrepute or adversely affect it may also be considered a reason for implementing the disciplinary procedure
- 1.5 The procedure is designed to establish the facts quickly and to deal consistently with disciplinary issues.
- 1.6 Where appropriate, informal action will be considered to resolve problems.
- 1.7 No potential disciplinary action will be taken until the issue has been fully investigated
- 1.8 At every stage an employee will be informed in writing of the nature of the complaint against him/her and will have the opportunity to state his/her case before any decision is made at a disciplinary meeting.
- 1.9 Where appropriate, employees will be provided with written copies of evidence and relevant witness statements in advance of a disciplinary meeting.
- 1.10 At all stages of the procedure an employee will have the right to be represented or accompanied by a trade union representative or a work colleague. Where there are no other employees you will need to seek the Panel's consent to your choice of companion.
- 1.11 An employee has the right to appeal against any disciplinary action
- 1.12 Any stage of the procedure may be implemented if an employee's alleged misconduct warrants this.
- 1.13 No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the dismissal will be dismissal without notice or payment in lieu of notice.

## **PROCEDURE:**

### **2. Informal Procedure**

***'Where appropriate, informal action will be considered to resolve problems.'***

- 2.1 If the work performance or conduct of an employee is considered unacceptable, an informal meeting may be arranged to explain any shortcomings and suggest ways of correcting them.
- 2.2 If the informal procedure is adopted, the Council may write to the employee confirming the nature of the problem, setting objectives to remedy it and stating the timescale within which any shortcomings must be rectified. The informal warning may be kept on the employee's file for a period of six months and any further breaches may lead to the formal procedure being implemented.
- 2.3 The Council will only initiate the formal procedure if the informal procedure fails to result in the desired change or improvement or in the case of any issue that is considered sufficiently serious.
- 2.4 If any conduct or breach is considered sufficiently serious, the Council in its absolute discretion may implement the formal procedure without reference to the informal procedure.

### **3. Formal Procedure**

***'At every stage the employee will be informed in writing of the nature of the complaint against him/her and will have the opportunity to state his/her case before any decision is made at a disciplinary meeting.'***

#### **3.1 Step 1 - Establish the facts**

***No potential disciplinary action will be taken against an employee until the case has been fully investigated.***

- Where necessary the Council will, without any unreasonable delay, carry out investigations of potential disciplinary issues in order to establish the facts of the case.
- In some instances this will require an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage may just be the collation of evidence for use at any subsequent disciplinary hearing.
- The investigation and any subsequent disciplinary hearing will, where practicable, be carried out by different people.
- An investigatory meeting will not by itself result in any disciplinary action.
- The employee will be invited to attend the investigatory meeting and may be accompanied by a chosen companion (see 3.8).
- When there is an allegation of gross misconduct it may be necessary to suspend the employee (with pay and without prejudice) pending investigation. Where this occurs the period will be as brief as possible, be kept under review and will never be considered a disciplinary action.
- If, following an investigation, the Council decides there is no case to answer, the employee will be informed in writing.

3.2 **Step 2 - Inform the employee of the problem**

- If it is decided that there is a disciplinary case to answer, the employee will be notified of this in writing and given information about the possible disciplinary outcomes.
- In cases of misconduct, the employee will be given a copy of the relevant investigation report with supporting witness statements and other evidence.
- The notification will give details of the time and venue for the disciplinary meeting and advise the employee of his/her right to be accompanied.
- If, following an investigation the Council decides there is no case to answer, the employee will be informed in writing.

3.3 **Step 3 - Hold a meeting with the employee to discuss the problem**

Meetings will be held without delay, but with a reasonable interval to allow the employee to prepare his/her case.

If the employee is persistently unable to attend a meeting the Council will need to decide whether the meeting can go ahead in the employee's absence. If the inability to attend is because of ill health, the Council, (with the employee's consent), may need to obtain a prognosis from his/her GP. Even if the employee does not attend the meeting, he/she should be given the opportunity to be represented and to submit evidence.

At the Meeting:

- The complaint against the employee will be explained
- The evidence that has been gathered will be presented
- The employee will be allowed to set out his/her case and answer any allegations that have been made.
- The employee will be given the opportunity to ask questions, present evidence and call relevant witnesses.
- The employee will be given the opportunity to raise points about any information from witnesses.
- The proceedings will be minuted by a note-taker.

If the problem affects the Clerk, the Chair or Vice Chair of the Council should seek external advice on the most appropriate constitution of the panel.

The Council will always give advance notice of intent to call witnesses and expect that the employee will do the same. Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause, the Council reserves the right to make a decision on the evidence available.

3.4 **Step 4 - Decide on any appropriate action**

Only after the meeting will a decision be made regarding disciplinary or any other action that is justified. Once this has taken place the employee will be informed in writing.

### 3.5 **Outcomes**

If an employee's first misconduct or unsatisfactory performance is sufficiently serious, it might be appropriate to move directly to a final written warning. In the case of **gross misconduct** and/or if the appropriate stages of the formal procedure have been exhausted, your employment will normally be terminated. **Gross Misconduct** is defined in Section 3.7 below.

#### 3.5.1 **VERBAL Warning**

- A first formal warning may be given if performance or conduct does not meet acceptable standards.
- If performance is unacceptable the warning will set out the performance problem, the improvement required, the timescale and any help that is available.
- If conduct is unacceptable the warning will set out the nature of the misconduct and the change in behaviour required.
- The employee will be advised that this warning constitutes the first stage of the formal disciplinary procedure.
- A record of the verbal warning will be placed on the employee's personnel file but will be disregarded after a period of six months, subject to him/her achieving and sustaining satisfactory performance or conduct.

#### 3.5.2 **WRITTEN Warning**

- If there is continued poor performance or subsequent misconduct the employee will be given a written warning with an action plan and review date and will be informed of the likely consequence of failure to achieve acceptable standards of performance or conduct.
- A copy of the warning will be placed on the employee's personnel file but will be disregarded after a period of twelve months, subject to achieving and sustaining satisfactory performance or conduct.

#### 3.5.3 **FINAL WRITTEN Warning**

- If there is further misconduct or failure to improve performance during the currency of a prior warning, a final written warning may be given to the employee. This will give details of the complaint, the improvement required and the timescale. It will also warn that failure to improve may lead to dismissal.
- A copy of the final written warning will be placed on the employee's personnel file but will be disregarded after a period of twelve months, subject to achieving and sustaining satisfactory performance or conduct.

### 3.6 **Appeal**

If the employee feels that disciplinary action imposed was unjust or that a proper or fair process was not followed he/she has the right of appeal provided it is made in writing to the Chair/Vice Chair (as appropriate) to the Council within five working days of being notified. The employee must set out in full the grounds on which the appeal against the decision is made, stating whether it is because the employee disagrees with the findings of misconduct or with the sanction that was imposed.

- 3.6.1 A committee or panel consisting of at least three members who did not sit on the committee or panel that made the original decision will hear the appeal. Its' decision will be final.

### **Appeal cont.**

- 3.6.2 On receipt of notice of the employee's appeal, the Appeals Panel shall be entitled to seek such other submissions, verbally or in writing, from the employee or such other persons as appropriate. This stage of the procedure will be either a rehearing or a review of the original decision.
- 3.6.3 The employee has the right to have a companion present at the appeal hearing as with the original disciplinary hearing.
- 3.6.4 The employee will be advised of the outcome of the appeal in writing as soon as possible after the hearing.
- 3.6.5 Where the employee has been dismissed, the date of dismissal will stand if the appeal is rejected and the date of the termination of employment will not be the date on which your appeal was rejected.

### 3.7 **Gross Misconduct**

**Gross Misconduct includes matters so serious that they fundamentally breach the employment relationship and where the magnitude is regarded as sufficiently serious that the employment of the person concerned should be immediately terminated.**

**Examples of gross misconduct:**

- Theft or fraud
- Bringing the Parish Council into disrepute by conduct whether at work or outside.
- Dishonesty at work whether or not it will cause loss to the Parish Council
- Misuse of any confidential information belonging to the Parish Council or of information that the Parish Council considers may cause the Parish Council harm or bring it into disrepute.
- Serious incapability at work brought on by alcohol or illegal drugs.
- Failing to adhere to any statutory or regulatory requirements where such failure is wilful or amounts to gross negligence or incapability
- Falsification of any of the Parish Council's documents whether or not it gives the employee a pecuniary advantage or whether it is likely to cause loss to the Parish Council.
- Negligent behaviour which may be gross or which may affect the Parish Council's trust and confidence in the employee's ability to carry out his/her job.
- Absence from work that is unauthorised.
- Inappropriate use of the Parish Council's telephones &/or e-mail system &/or the Internet.
- Physical violence or bullying

### 3.8 **Notes on being accompanied at the meeting**

Employees have a statutory right to be accompanied to a meeting where a disciplinary sanction could be imposed or where a grievance is raised.

The chosen companion may be a colleague, an accredited trade union representative or an official employed by a trade union.

Where there are no other employees you will need to seek the Panel's consent to your choice of companion.

The employee must make their request to be accompanied clear. The person must not be someone whose presence would prejudice the hearing or be from a remote location if someone suitable and willing is available locally.

If the companion cannot attend on the original meeting date, the hearing must be postponed if the employee proposes a reasonable alternative date that is within five working days.

The companion will be allowed to address the hearing to put and sum up the employee's case, respond on their behalf to any views expressed at the meeting and confer with the worker during the hearing. However, they cannot answer questions on the worker's behalf, address the hearing if the employee does not wish it or prevent the employer from explaining their case.