



Appendix E 3-3

FRATING PARISH COUNCIL

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DISCIPLINARY PROCEDURE

This policy is based on and complies with the 2015 ACAS Code of Practice. It also takes account of the ACAS guide on discipline and grievances at work. The policy is designed to help Council employees improve unsatisfactory conduct and performance in their job. Wherever possible, the Council will try to resolve its concerns about employees' behaviour informally, without starting the formal procedure set out below.

The policy will be applied fairly and consistently and in accordance with the Equality Act 2010.

PRINCIPLES

The Council will fully investigate the facts of each case;

- The Council recognises that misconduct and unsatisfactory work performance are different issues; the disciplinary policy will also apply to work performance issues to ensure that all alleged instances of employees' underperformance is dealt with fairly and in a way that is consistent with required standards. However, the disciplinary policy will only be used when performance management proves ineffective. For more information see the ACAS publication "Performance Management".
- Employees will be informed in writing about the nature of the complaint against them and given the opportunity to state their case.
- Employees may be accompanied or represented by a workplace colleague, trade union representative at any disciplinary, investigatory or appeal meeting. The companion is permitted to address such meetings, to put the employee's case and confer with the employee.
- The Council will give employees reasonable notice of any meetings in this procedure. Employees must make all reasonable efforts to attend. Failure to attend a meeting may result it going ahead and a decision being taken. An employee who does not attend a meeting will be given the opportunity to be represented and to make written submissions.
- The employee can request a postponement and propose an alternative date that is within five working days of the original meeting date.
- Information about an employee's disciplinary matter will be restricted to those involved in the disciplinary process and must remain confidential.
- Recordings of the proceedings are prohibited, unless agreed as a reasonable adjustment that takes account of an employee's medical condition.
- If an employee is suspended following allegations of misconduct, it will be on full pay and only for such time as is necessary. Suspension is not a disciplinary sanction. The council will write to the employee to confirm any period of suspension and reasons for

- it.
- The council may consider mediation throughout any stage of the disciplinary process, which requires the council's and employees consent.

MISCONDUCT, GROSS MISCONDUCT & UNSATISFACTORY PERFORMANCE

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

- Unauthorised absence from work;
- Persistent short-term and/or frequent absences from work without a medical reason;
- Minor breaches of Health & Safety rules or procedures;
- Lateness for work or poor time keeping;
- Failure to perform your job to the standard expected or in line with your job description/objectives;
- Disruptive or inappropriate behaviour;
- Misuse of the council's resources and facilities (e.g. telephones, computers, email or the internet);
- Refusal to carry out reasonable requests or instructions;
- Smoking in unauthorised areas;

This list is not exhaustive and offences of a similar nature will result in disciplinary action being instigated. N.B. persistent or frequent absence on medical grounds and long term sickness absence will be dealt with in accordance with the employee's contract.

The following list provides examples of offences which are normally regarded as **gross misconduct**:

- Bullying, discrimination and harassment;
- Incapacity at work due to being under the influence of illegal drugs or alcohol;
- Violent behaviour;
- Theft, fraud, deliberate falsification of records, or other acts of dishonesty;
- Deliberate damage to property of the council, its workers or members;
- Gross negligence;
- Being under the influence of illegal drugs or excessive alcohol;
- Gross insubordination;
- Disclosure of confidential information;
- Unauthorised entry to computer records;
- Serious breach of any of the council's policies;
- Any action, whether committed on or off the premises, that is likely to or does bring the council into disrepute;

This list is not exhaustive and other offences of a similar gravity 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.

The following list provides examples of **unsatisfactory work performance**, which will normally give rise to formal disciplinary action:

- Inadequate application of management instruction/office procedures;
- Inadequate IT skills;

- Unsatisfactory management of staff;
- Unsatisfactory communication skills.

DISCIPLINARY INVESTIGATION

1. The Council will appoint an investigator who will be responsible for undertaking the investigation. It will be a fact-finding exercise to collect all relevant information. The investigator will be independent and will normally be a Councillor. The terms of reference should deal with the following:
 - What the investigation is required to examine;
 - Whether a recommendation is required;
 - How the findings should be presented. For example, an investigator will often be required to present the findings in the form of a report;
 - Who the findings should be reported to and who to contact for further direction if unexpected issues arise or advice is needed.
2. The investigation will be asked to submit a report within 20 working days of appointment. In cases of alleged unsatisfactory performance or of allegations of minor misconduct, the appointment of an investigator may not be necessary the Council may decide to commence disciplinary proceedings at the next stage (see paragraph 9).
3. The employee will be notified in writing of the alleged misconduct and asked to attend a meeting with the investigator. The employee will be given at least five working days' notice of the meeting to allow for preparations to be done. The letter will explain the investigatory process and that the meeting is part of that process. The employee should be provided with a copy of the Council's disciplinary procedure. The employee should also be informed that they will have the opportunity to comment on the allegations of misconduct.
4. Employees may be accompanied or represented by a workplace colleague, a trade union representative or a trade union official at the investigatory meeting.
5. If there are other persons e.g. councillors, members of the public, who can provide relevant information, the investigator should try to obtain it from them in advance of the meeting.
6. The investigator does not have the authority to take disciplinary action. His/her role is to establish the facts of the case as quickly as possible and prepare a report that recommends whether or not disciplinary action should be taken.
7. The investigator's report will contain recommendations and findings on which they were based. Recommendations will be either:
 - The employee has no case to answer and no further action is needed;
 - The matter is not serious enough to justify use of the disciplinary procedure and can be dealt with informally;
 - The employee has a case to answer and there should be action under the disciplinary procedure.
8. If the Council decides that it will not take disciplinary action, it may consider whether mediation would be appropriate in the circumstances.

DISCIPLINARY MEETING

9. The disciplinary panel will appoint a Chairman from one of its members. The investigator shall not sit on the disciplinary panel. No Councillor with direct involvement in the matter should be appointed on the panel. The employee will be invited in writing, to attend the disciplinary meeting. The disciplinary panel letter will confirm:

- the name of the Chairman and two other members;
- details of the alleged misconduct, its possible consequences and the employees statutory right to be accompanied;
- a copy of the investigatory report with all supporting evidence and a copy of the disciplinary procedure;
- the time and place for the meeting. The employee will be given reasonable notice of the hearing (at least 15 working days) so that they may have sufficient time to prepare for it;
- witnesses may attend on the employee's and council's behalf and both parties should inform each other of their witnesses' names at least five working days before the hearing;
- that the employee may be accompanied by a companion – a workplace colleague, a trad union representative or a trade union official.

The disciplinary meeting will be conducted as follows:

- The Chairman will introduce the member of the disciplinary panel to the employee;
- The investigator will present the findings of the investigation report;
- The Chairman will set out the council's case and present supporting evidence (including any witnesses);
- Any member of the disciplinary panel and the employee (or companion) can question the investigator or witness;
- The employee (or companion) will have the opportunity to sum up his/her case;
- The Charman will provide the employee with the disciplinary panel's decision with reasons, in writing, within 5 working days of the meeting. The Chairman will also notify the employee of their Right of Appeal.
- The disciplinary meeting may be adjourned to allow matters that were raised during the meeting to be investigated by the disciplinary panel.

DISCIPLINARY ACTION

10. If the disciplinary panel decides that there should be disciplinary action, it may be any of the following:

Oral Warning: issued mostly for instances of minor misconduct. The council will notify the employee: of the reasons for the warning, the improvement required (if appropriate) and the time period for improvement; that further misconduct/failure to improve will result in more serious disciplinary action; of the Right of Appeal; that a note of the oral working will be placed on the employee's file and will remain in force for six months.

Written Warning: if there is a repetition of earlier misconduct, which resulted in an oral warning, or for a more serious misconduct, the employee will normally be given a written warning. A written warning will set out: the reasons for the written warning, the

improvement required (if appropriate) and the period for improvement; that further misconduct/failure to improve will result in more serious action being taken including dismissal; employees Right of Appeal; that a note of the final written warning will be placed on the employees file and remain in force for 18 months.

Dismissal: The Council may dismiss for gross misconduct;

- If there is no improvement within the specified time in the conduct which has been subject of a final written warning;
- If another instance of misconduct has occurred and a final writing warning has already been issued and remains in force.

THE APPEAL

11. An employee who is subject to disciplinary action will be notified of their Right of Appeal. His/her written notice of appeal must be received by the council within five working days of the employee receiving written notice of disciplinary action and must specify the grounds for appeal.

12. The grounds of appeal include:

- A failure by the Council to follow its disciplinary policy;
- The disciplinary panel decision was not supported by evidence;
- The disciplinary action was too severe in the circumstances of the case;
- New evidence has come to light since the disciplinary meeting

13. Where possible the Appeal will be heard by a separate panel of elected members who have not been involved in the original disciplinary hearing, who will view the evidence with impartiality. The employee will be notified, in writing, within 10 working days of receipt of the notice of appeal of the time, date and place of the appeal meeting. The employee will have the right to be accompanied by a companion – a workplace colleague, a trade union representative or trade union official.

14. The outcome of the appeal and reasons for it will be advised to the employee, in writing, within 10 working days 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.

Note-Taking

15. It is recommended that a note-taker be provided to every meeting/hearing which arises because of a disciplinary process as Employment Tribunals are particularly keen to view contemporaneous notes of events which have led to an employment dispute. Councils will need to give this requirement careful consideration to respect employee confidentiality.

Grievances raised during disciplinarys

16. In some circumstances when a disciplinary process has commenced an employee chooses to exercise his/her right to raise an internal grievance about the employment relationship with the council or individual Members. In these circumstance disciplinary matters should be placed on hold until grievances have been addressed.