

## **FRAMPTON COTTERELL PARISH COUNCIL**

### **MANAGING EMPLOYEE PERFORMANCE PROCEDURE & DISCIPLINARY**

#### **1. INTRODUCTION**

- 1.1 The Parish Council recognises that its ability to deliver satisfactory services and meet its objectives is dependent on the effective work performance of its employees.
- 1.2 The Council will carefully recruit and select staff, provide induction, one to ones and team meetings, ensure staff are clear about the standards that apply and their expected work performance levels, and develop staff. The Clerk (or Councillors/from the Staffing Committee in the case of the Clerk) will review and give feedback to staff.
- 1.3 The Council expects its employees to maintain satisfactory levels of attendance, job performance, and conduct, raise any problems affecting their work, and respond constructively to advice, guidance and development provided by the Clerk (or Councillors in the case of the Clerk).
- 1.4 The Council believes that the workforce is well motivated and performs well.
- 1.5 The Council also recognises there will be situations where an employee's performance, attendance, or conduct does not meet the standards required. This procedure is designed to help and encourage employees to achieve and maintain acceptable standards of conduct and job performance at all times, including the need to: -
  - Fulfil the duties specified in their contract of employment.
  - Be honest and act beyond suspicion of dishonesty.
  - Maintain high standards of integrity and conduct to protect the Council's image and reputation with the public.
- 1.6 This policy indicates the process that will normally be followed in the event of misconduct, poor attendance, or poor job performance, and complies with legislation (Employment Rights Act 1996, Human Rights Act 1998, the Employment Act 2021) and guidance provided by ACAS. The following list provides examples of conduct that will normally be regarded as misconduct leading to performance management. The list is not exhaustive. These are examples only:
  - a. Failure to comply with Council's rules and procedures applicable to job requirements, including those relating to attendance, time keeping, sickness absence, health and safety, uniform policies, use of Council facilities, use of I.T., data protection policies, and financial processes;
  - b. Unsatisfactory productivity due to sporadic sickness absence (especially where there are no underlying medical conditions);
  - c. Failure to work to the productivity/performance standards which are expected;
  - d. Failure to exercise reasonable care or skills, due to negligence or lack of effort;

- e. Deliberate failure to carry out a reasonable management instruction and insubordination;
  - f. Behaviour deemed to be discriminatory, bullying, or harassment;
  - g. Consuming alcohol or substances outside of working hours or during working hours that affect performance or ability to work safely or reporting to work under the influence of alcohol or other substances. If an offer of support and treatment is not taken up or leads to little or no change then this will be dealt with under this Procedure (see Council's Absence Policy).
  - h. Any other conduct that from time to time is defined by the Council as amounting to misconduct.
- 1.7 At every stage in the procedure the employee will be advised of the nature of the complaint against him or her and will be given the opportunity to state his or her case before any decision is made. Meetings may be recorded. Employees' have the right to appeal against written warnings and dismissal. Employees have the right to be represented at investigation meetings, hearings and appeals (by a trade union representative or work colleague). Representatives have the right to address the hearing or appeal. They may only ask questions and present the employee's case but cannot answer questions on the employee's behalf. Should the employee fail to attend a hearing or appeal without an acceptable reason, then the Chair of the panel may proceed in the employee's absence.
- 1.8 Records will be kept of informal and formal stages and stored confidentially in accordance with Data Protection legislation.
- 1.9 The Council will deal with any performance matters promptly, firmly, consistently, and confidentially in order to demonstrate the Council takes these issues seriously.

## **2. SCOPE**

The procedure applies to all employees of Frampton Cotterell Parish Council relating to misconduct, capability, and sickness absence (with the exception of long-term absence or absences due to underlying medical condition/disabilities when adjustments have not been made which are dealt with under the Absence Policy. This procedure does not cover employees still within their probationary period, for these staff please refer to the probationary policy.

## **3. INFORMAL ACTION**

- 3.1 For first instances of minor misconduct or unsatisfactory performance, the Clerk or Councillor (in the case of the Clerk) may speak to the employee informally seeking to resolve any problems quickly and confidentially.
- 3.2 In the majority of cases this meeting will only involve the employee and Clerk/Councillor, however there may be situations where it is beneficial for the employee to be accompanied at the meeting by a trade union representative or work colleague i.e. when the employee requests this as a reasonable adjustment. The Clerk/Councillor may require Human Resources to assist at the meeting. Any accompaniment would be on the clear understanding that it does not change the informal status of the meeting.

- 3.3 The informal discussion should cover the following:
- a. explain what the conduct/capability/performance/attendance concerns are and ensure the employee understands,
  - b. investigate reasons behind these concerns, consider if there are any health or domestic issues or any workplace issues,
  - c. re-enforce standards and requirements,
  - d. consider whether any adjustments are needed to the work or workplace to enable to employee to improve,
  - e. offer support, advice and guidance and consider if any additional training or coaching is required.
  - f. state how the performance or conduct will be reviewed and over what period.

To put the meeting into context the Clerk/Councillor should make the employee aware of this Procedure and the consequences of failure to improve, i.e. possibility of formal stages.

- 3.4 If through discussions with the employee the matter is considered more serious the Clerk/Councillor should adjourn any meeting and tell the employee advice will be sought on managing the issue formally.
- 3.5 The Clerk/Councillor should keep brief notes of any agreed informal action for reference purposes and in some situations it may be useful to confirm in writing to the employee what has been decided.
- 3.6 Informal discussions can take place in scheduled one-to-one meetings but should not be delayed pending such a meeting. One-to-one discussions can be used to monitor performance and review progresses made and ensure training and support requirements are met.
- 3.7 If acceptable improvement is made then this should be communicated to the employee (in writing when the informal discussion was detailed in writing). If there is not sufficient improvement in performance or attendance then the Clerk/Councillor should take formal action.

## **4. FORMAL ACTION/DISCIPLINARY**

### **4.1 MANAGEMENT INVESTIGATION**

- 4.1.1 If informal action does not bring about the desired improvements and/or if the conduct or performance issue is considered sufficiently serious, the Clerk/Councillor will nominate an investigating officer to investigate the alleged misconduct/poor performance (likely to be Councillors from the Staffing Committee who have had no previous involvement). HR advice should be sought at this stage if this has not already been done.

#### **4.1.2 SUSPENSION**

At this stage the Chair of the Council/Clerk/HR may consider suspending the employee on full pay if alleged misconduct is:

- a. potential gross misconduct and dismissal could be the eventual penalty;
- b. the investigation cannot proceed if the employee remains in their current job without the risk of the alleged offence being repeated and it is not possible to move the employee to another job/place of work until the process is complete;

- c. to allow the employee to remain at work would place other employees, service users, or others at risk of harm/injury
- d. there are concerns that evidence may be tampered with or witnesses put under undue pressure.

You may consider making adjustments to the working arrangements of the employee in the avoidance of suspension.

Suspension is not considered a disciplinary sanction and does not mean that any judgement has been made as to whether the employee is guilty of any misconduct – suspension would only be actioned as a last resort. It is possible that suspension may be lifted during the investigation and prior to any hearing, if the circumstances merit it.

Suspended employees will be allocated a contact officer. They must not enter their place of work or contact any clients or members of staff without prior approval from their contact officer. They will remain on their existing terms and conditions throughout the period of suspension so need to report sickness and book annual leave, even though they are not at work, via their contact officer.

#### **4.1.3 Child Protection or Abuse against a Vulnerable Adult**

If allegations involve any concerns around abuse of a child or vulnerable adult, reference should be made to the Council's Safeguarding Children and Vulnerable Adults Policy and all necessary agencies such as Social Services and the Police will be contacted, alongside all actions detailed in this Procedure.

#### **4.1.4 Criminal charges or convictions**

Where an employee is likely to be subject to criminal charges the following need to be considered:-

- i. If the employee is alleged to have committed an offence and any possible Court action is some months away, the Clerk/Chair of the Council should consider whether there is sufficient justification to take any action and if there is, a management investigation should proceed without delay.
- ii. It is imperative that there is a proper and thorough investigation, and not to rely on the fact that there is a court case pending. A request should be made to the Police or the relevant agency for any evidence they are able to release to aid in the Council's investigation.
- iii. If it is decided to convene a performance hearing a decision can be made on the basis of the information/evidence available. It is not necessary to wait for a Court decision before the panel reaches its decision.
- iv. If very little information is available to the Council prior to the Court hearing, then there may be no option but to defer any investigation pending the Court hearing. Suspension of the employee during this time can be considered.
- v. If an employee is detained in prison, then the Clerk or Staffing Committee must make a decision as to how to proceed depending on the length of time involved or the nature of the offence. A Performance Hearing should be held if there is sufficient evidence available to the Council, in the employee's absence (the employee can provide a written submission or send a representative to speak on their behalf).

- 4.1.5 The Council will set out in writing the allegations that lead the Council to contemplate taking any action against the employee, determining the principal cause of the performance issue: **sickness absence, misconduct, or capability**, and confirm that a management investigation will be undertaken. The employee should be given a copy of this Procedure and kept informed throughout the process.

- 4.1.6 The investigator will need to carry out any investigations of alleged poor performance or misconduct without unreasonable delay to establish the facts of the case. They will conduct a fair and balanced investigation. In some cases this will require holding an investigatory meeting with the employee (with 5 working days' notice and the right to be accompanied). The employee must take all reasonable steps to attend the meeting. In others, the investigatory stage will be a collation of evidence by the investigator.
- 4.1.7 The investigator will need to decide if other witnesses need to be interviewed or whether other relevant information needs to be obtained e.g. from Occupational Health.
- 4.1.8 If any underlying medical condition is identified, consideration should be given to the Council's Managing Ill Health Procedure.
- 4.1.9 The investigation must be sufficient to establish whether there is genuine belief that there is a performance issue and provide reasonable grounds on which to sustain the belief on the balance of probabilities. The case does not have to be proven beyond reasonable doubt.
- 4.1.10 **Investigation Outcome**  
The investigating officer will report back to the Clerk/Chair of the Council on their findings and recommendations. If the investigation determines that there is in fact no performance issue, the employee should be notified in writing (with any training, support or extra supervision or advice provided). If there is a case to answer the investigating officer should arrange a Performance Hearing.
- 4.1.11 If an employee's sickness absence from work is delaying any stage of the process the investigator may seek advice from Occupational Health as to whether the employee's illness prevents the employee from participating in this process. They may decide to progress the investigation and Hearing with all available information including any written submissions from the employee if unfit to attend, recognising that delays can cause further stress to all parties concerned. This decision will be communicated in writing to the employee.
- 4.1.12 If any issues are raised by the employee about the investigator, consideration should be given as to whether a different investigator should carry out the investigation. If the employee's issues relate to the way the investigation has been conducted these should be presented if the case proceeds to a Performance Hearing. The Panel will have to decide whether or not the issues have materially affected the outcome of the investigation.

## **4.2 PERFORMANCE HEARING**

- 4.2.1 An employee will be given, in writing, no less than 5 working days' notice of the date of the Performance Hearing. They will be informed of the matters that are to be discussed and the possible consequences. A copy of this Procedure and a written submission will be provided together with the notice of the hearing date and the right to be accompanied. The written submission will include copies of any previous correspondence, any documentation relevant to the issue, witness statements, absence records, or anything intended to be presented as evidence. This will be provided to all panel members and an additional copy will be sent to the employee for their representative.

- 4.2.2. Details of any witnesses the employee intends to call and any written submission or documents that the employee wishes to refer to at the hearing must be submitted to the Investigating Officer at least 3 working days prior to the hearing.
- 4.2.3 The Performance Hearing Panel would normally be three members of the Council Staffing Committee, one of which is the Chair and a HR Advisor (all parties will have had no involvement in the investigation).
- 4.2.4 The Hearing will normally proceed as follows:
- The Hearing Chair will introduce Panel members and specify their roles, clarify the purpose of the hearing and state the allegations;
  - The investigating Clerk/Councillor will present the case outlining the background, any current sanctions, and the performance/conduct issue. They will call any witnesses to give evidence and ask questions of their witnesses. The employee's side will then have the opportunity to question the witnesses and the investigators on the evidence presented, followed by the Hearing Panel.
  - The employee and/or their companion will present their case and any mitigating factors that they wish the panel to take into consideration. The employee or companion will call any witnesses to give evidence. The employee will ask questions of their witnesses. The investigators will then have the opportunity to question the witnesses and the employee on the evidence presented, followed by the Hearing Panel.
  - If new evidence emerges it may be necessary to adjourn the hearing to allow time to investigate it and share any further information prior to the hearing being convened.
  - Both the investigator and employee will have the opportunity to summarise the main points raised.
  - Hearing Panel adjourn to make their decision;
  - Hearing reconvened and the employee/representative informed of the decision and, if necessary, their rights of appeal.
- 4.2.5 When an employee raises a grievance during the hearing it may sometimes be appropriate to consider stopping the hearing and suspending the procedure - for example if bias/discrimination is alleged in the conduct of the hearing.
- 4.2.6 The panel will consider in private all of the relevant evidence and come to a decision as to whether or not the case is proven, this may be on the balance of probabilities. If the case is proven, the Councillor chairing the panel, advised by HR, will decide the appropriate sanction. The Council will consider any current sanctions for the purposes of determining a relevant sanction. Recently spent sanctions may also be considered, should these be related to the allegations under consideration. If the case is not proven the employee will be informed accordingly both verbally and in writing.
- 4.2.7 The Hearing outcome letter will detail the panel's conclusions concerning the allegations, any mitigating factors, and the sanction imposed. It will also detail the nature of any improvement required, any support to be provided to the employee and inform the employee of the implications of any further misconduct, absence or unsatisfactory performance in the case of First or Final Written Warnings. The letter will also detail the employee's right of appeal (see section 6.4).

### **4.3 SANCTIONS**

- 4.3.1 In determining the appropriate disciplinary action, regard should be given to the employee's previous record, the gravity of the offence, any explanation, and the

category of the allegation – Misconduct, Sickness Absence or Capability or Gross Misconduct.

- 4.3.2 Any sanction can also include withholding of any increment or withdrawing any salary enhancement (for first or final written warnings), an agreement to repay any sums of money owed to the Council, including breaches of working hours.
- 4.3.3 Any first or final written warning will remain current for the time period specified but will remain on an employee’s file thereafter for information.
- 4.3.4 The panel may decide as an alternative to dismissal to consider transferring or demoting an employee (with their agreement) to an existing vacancy, alongside the issuing of a final written warning.

<b>SANCTION</b>	<b>TIME PERIOD</b>	<b>WHEN TO USE</b>
First written warning	12 months from date of hearing panel	If this is the first hearing for misconduct, sickness absence, or capability, normally a first written warning will be given.
Final written warning	2 years from date of hearing panel	If the employee has a current warning then further misconduct, absence or performance (whether or not connected with the earlier offence) will normally result in a final written warning, or exceptionally could result in dismissal (see below). OR if the issue is considered sufficiently serious it may be justifiable to move directly to a final written warning.
Dismissal with contractual notice		For misconduct/unsatisfactory performance EXCEPT gross misconduct, by an employee who is under a final written warning. The employee will be dismissed with notice or pay in lieu of notice and paid for the balance of any untaken annual leave. Dismissal letter to specify the reason for dismissal.
Gross Misconduct (see section 4.3.4 below)		In cases where gross misconduct is established the employee will be summarily dismissed without notice or pay in lieu of notice.

**4.3.5 GROSS MISCONDUCT**

Gross misconduct refers to situations where the employee’s conduct is such that it fundamentally repudiates the contract of employment. It may justify dismissal without any previous performance warning, unless there are extenuating circumstances. The following list provides examples of conduct that will normally be regarded by the Council as gross misconduct, depending on the seriousness and circumstances of the offence; the list is not exhaustive. These are examples only:

- a. Theft, fraud and deliberate falsification of financial records (including falsification of pay, expense claims, qualification, or attendance records).

- b. Failure to declare a criminal conviction or disqualification (where relevant to the post) on job application or once employed.
- c. Deliberate damage to Council's property and misuse of the Council's property or name.
- d. Fighting, assault or other physical violence, or serious verbal abuse to another employee, client, Member, or member of the public.
- e. Serious infringement of the Council's Health and Safety procedures (including acts or omissions at work which seriously endanger the health or safety of employees, clients or members of the public).
- f. Serious incapacity, whilst on duty, due to alcohol or drugs.
- g. Serious harassment and/or discrimination.
- h. Physical or sexual abuse of clients of the Council or failing to bring to the Council's attention any such offences committed by other Council employees.
- i. Serious negligence in carrying out the required duties of the post which causes, or has the
- j. potential to cause, unacceptable loss, damage or injury.
- k. Serious insubordination, or wilfully failing to carry out reasonable instructions.
- l. Serious breach of Council's ICT policies and procedures such as deliberately viewing, downloading or transmitting pornographic, racist, or other offensive material
- m. Serious breach of Council's Data Protection policies such as unauthorised disclosure of confidential information.
- n. Sleeping on duty.
- o. Conduct bringing the Council into serious disrepute.

#### **4.4 RIGHT OF APPEAL**

- 4.4.1 If the employee wishes to appeal against the Council's decision, they must notify the Chair of the Council in writing within five working days of receiving notice of the Council's decision. In lodging an appeal the employee must outline their grounds of appeal in writing, specifying whether it relates to the facts of the matter, new evidence, the level of sanction imposed or the way in which the procedure was followed, and the remedy sought.
- 4.4.2 If the employee appeals, the Council will invite the employee to attend an appeal meeting before the Council's Appeal Panel. The Appeal Panel will consist of differently constituted panel of 3 members of the Council, providing that they have had no previous involvement in the matter. The employee must take all reasonable steps to attend the meeting. The employee has the right to be accompanied at an appeal meeting by a work colleague or trade union representative. Independent external professionals may also be part of the panel to ensure fairness and independence.
- 4.4.3 **Arranging an Appeal**  
The date and time of the appeal will be organised by the Clerk or Staffing Committee. It is the responsibility of each side to prepare themselves for the appeal including arranging for any witnesses to attend. The Chair of the original panel and the employee or their representative will, where possible, submit papers for consideration by the appeals panel, at three days prior to the appeal meeting.
- 4.4.3 **Appeal Meeting process**  
The Appeal Meeting will normally proceed as follows:
- i. The Appeal Meeting Chair will introduce Panel members and specify their roles, clarify the purpose of the meeting, and state the sanction imposed and grounds of appeal.
  - ii. The Hearing Panel Chair will present the case outlining the background, any current sanctions



- a. and the performance/conduct issue. They will call any witnesses to give evidence.
- b. They will ask questions of their witnesses. The employee's side will then have the
- c. opportunity to question the witnesses and the Hearing Panel Chair on the evidence
- d. presented, followed by the Appeal Meeting Panel.
- iii. The employee and/or their companion will present their grounds for an appeal. The
  - a. employee or companion will call any witnesses to give evidence. The employee will
  - b. ask questions of their witnesses. The Hearing Panel Chair will then have the
  - c. opportunity to question the witnesses and the employee on the evidence presented,
  - d. followed by the Appeal Meeting Panel.
- iv. If new evidence emerges it may be necessary to adjourn the appeal to allow time to
  - a. investigate it and share any further information prior to the appeal being convened.
- v. Both the Hearing Panel Chair and employee will have the opportunity to summarise
  - a. the main points raised. Appeal Panel adjourn to make their decision;
- vi. Hearing reconvened and the employee/representative informed of the decision.

4.4.4 The following applies at the appeal meeting:

- a. Any new evidence arising after the Hearing which is relevant to the outcome of the Hearing that the employee wishes to put forward will be considered. The original disciplinary sanction will be reviewed.
- b. The sanction originally imposed cannot be increased upon appeal.
- c. The appeal meeting will not necessarily take place before any sanction imposed by the Council takes effect. If the employee's appeal is against dismissal and the appeal is successful, he or she will be reinstated and continuity of employment will be preserved.
- d. The Appeals Panel has the right to call its own witnesses should it consider this to be of assistance in making its decision.

4.4.4 After the appeal meeting the employee will be informed of the Council's final decision within five working days; the meeting may be reconvened for this purpose. The Council's decision will be confirmed to the employee in writing.

## 5 GENERAL PROCEDURAL INFORMATION

5.1 Where performance proceedings are instigated against the Clerk, all employee relations matters are dealt with by the Council's Staffing Committee. Any investigations and any meetings will be carried out by the Council's Staffing Committee and/or independent external professionals.

Any appeal meeting will be conducted by three (3) members of the Council, who do not sit on the Staffing Committee and/or independent external professionals.

5.2 Where an employee raises a grievance during this Procedure the process may be temporarily suspended in order to deal with the grievance. Where the grievance and performance cases are related it may be appropriate to deal with both issues at the same time.

### **5.3 Trade Union Officials**

In normal circumstances no action will be taken against an Officer of a recognised trade union until the matter has been discussed with an officer of that union, who may wish to be the representative.