

Appendix 1

*North
Wiltshire
District
Council*

DISCIPLINARY PROCEDURE

Human Resources

DISCIPLINARY PROCEDURE

Responsibility for Discipline and Aims of the Procedure

The Chief Executive and Deputy Chief Executive Officers through their Heads of Service, Team Managers and first line managers are responsible for the maintenance of discipline within their service areas.

Normally discipline is maintained by example, advice, training, informal reprimands and through observance by employees of proper standards of conduct and the rules of the Council. However, it is recognised that in the interests of the conduct of the Council's affairs and for the safety and welfare of employees, discipline may occasionally need to be reinforced by the application of the formal aspects of the procedure.

The procedure forms part of the conditions of service for all employees of the Council except those under terms and conditions contained within J.N.C for Chief Officers, the Section 151 Officer, Monitoring Officer and any other senior Officer reporting directly to the Chief Executive, who are subject to separate arrangements. It has been devised to ensure the fair treatment of employees who become liable for disciplinary action.

Overall responsibility for the monitoring and the carrying out of this procedure rests with the Head of Human Resources.

This Procedure has been produced following appropriate consultation with the Council's recognised trades union, UNISON.

Application

Although this procedure applies to all employees of the Council, (except those employees identified above), it will not apply in the following circumstances where notice has been given by the Council.

1. When the employee has failed to satisfactorily complete a probationary period including any extended probationary period and dismissal arises from the unsuitability for confirmation of appointment.
2. When the reason for dismissal is some other substantial reason (as defined by employment legislation), i.e. not connected with an individual's capability or conduct.
3. When the dismissal arises as a result of the employee's incapability by reasons of ill health. (This will be dealt with under the Council's procedures for sickness/ill health.)

N.B. No disciplinary action will be taken against a trades union representative until the full time official of the trades union concerned has been informed of the facts of the case.

Responsibility

The **Chief Executive and Deputy Chief Executive Officer** along with their respective **Heads of Service**, are responsible for the management and discipline within their **Service Areas**. Authority to apply the procedure may be delegated to a nominated **Team Manager** as necessary, providing that the Officer is not involved in the investigating process.

When minor breaches of discipline occur, the employee will be informed by her/his manager of the conduct or standard required in the future and of the consequences of ignoring the advice given which may lead to a further breach of discipline. This is seen as part of the normal management process and is not part of the formal disciplinary procedure.

Where concerns are expressed on an employee's conduct and work practices etc, the manager will ensure that the employee is aware of the problems and confirms any agreements to address such problems with the employee in writing.

Procedure

The formal procedure will normally apply when.

1. Previous informal advice/reprimands/verbal warnings have proved ineffective.
2. The allegation is of a serious nature.
3. A number of minor allegations are made which taken together constitute a serious breach of discipline.

Guidance notes have been provided to advise managers on how to approach disciplinary issues as they arise.

Suspension

Suspension will only take place when the circumstances are so serious as to render it inappropriate for the employee to remain in work. Where possible alternatives to suspension should be considered, such as; transfer to another team/service area during the investigation.

An employee may be suspended on full pay whilst an investigation is conducted if suspension would facilitate the investigation or if the allegation, if proven, is likely to be viewed as gross misconduct, resulting in the employee's summary dismissal. (Suspension is not in itself a disciplinary sanction nor is it in any way an indication that the allegations are proven.)

Prior to suspension taking place advice should be sought from an Officer within Human Resources who will act as an unbiased officer concerned with the observation of best practice for both the needs of the individual and the Council.

Investigation

NB – all investigations will be conducted in accordance with the “Guidance Notes for Undertaking Investigations”.

In order to determine whether a disciplinary hearing is appropriate, the **Chief Executive/ Deputy Chief Executive Officer/Head of Service/Team Manager, or her/his nominated representative** must appoint an Investigating Officer (usually a manager) to conduct an investigation. The Investigating Officer will be responsible for collecting evidence, about the allegation, interviewing the employee and any witnesses and making recommendations to the **Chief Executive/ Deputy Chief Executive Officer/Head of Service/Team Manager, or her/his nominated representative** as to whether a disciplinary hearing should take place. Due consideration must be given to the need to resolve disciplinary issues as a matter of priority for the benefit of both the individual concerned and the Council.

If, after full investigation, it is determined that there is no case to answer then this decision will be conveyed to the individual in writing.

The investigation process should aim to be concluded within a reasonable time, with timescales agreed at the outset and should not normally take more than two months subject to the ultimate complications involved in the allegations (and/or by agreement between the two parties).

If, after a full investigation, and due consideration of the recommendations of the Investigating Officer, the **Chief Executive/Deputy Chief Executive Officer/Head of Service/Team Manager, or her/his nominated representative** considers that it is necessary to invoke the formal procedure Human Resources will inform the employee.

- 1 In writing at least ten clear working days notice of the proposed date of the disciplinary hearing. This date, where practicable, should be agreed in advance with the trade union representative, where applicable, which will contain:-
 - a) a clear statement of the allegations they will be required to answer together with any relevant documentation
 - b) their right to call witnesses and produce documentary evidence in support of their case
 - c) their right to be represented by a trade union representative or work colleague. In certain circumstances another representative, (not a solicitor or legal representative), may be allowed subject to the agreement of the **Head of Human Resources.****
- 2 All relevant documents will be exchanged 7 clear working days prior to the hearing.
- 3 The representative or individual will produce documentation within the same timescale wherever possible and at least three clear working days prior to the hearing.

The Disciplinary Hearing will be held and will include the employee, their chosen representative, see 1 (c) above, and a panel of Officers.

The panel will include a Head of Service/Team Manager, who will normally be the chair, another line manager (not necessarily a Head of Service or Team Manager), and an appropriate officer from Human Resources, who acts as adviser to the panel. In all cases of gross misconduct where the matter may lead to dismissal a Deputy Chief Executive Officer, Head of Service or Team Manager will chair the panel.

Hearing Procedure

The Introduction

The individual chairing the hearing will:-

- *Introduce those people present;
- *Confirm the allegations required to be answered
- *Explain the way in which the hearing will be conducted.

Presentation of Management's Evidence

The Investigating Officer will introduce the evidence established during the investigation. Each witness will be called into the hearing and will be:

- *Questioned by the Investigating Officer;
- *Questioned by the employee/representative;
- *Questioned by the Disciplinary Panel;
- *Questioned by the Investigating Officer to clarify particular points but not to introduce new evidence.

The witness will then leave the hearing.

At the conclusion of the Investigating Officer's submission he/she can be questioned by the employee and/or representative and by Panel Members.

Employee's Response

The employee and /or representative may respond to the allegations and may introduce documentation and witnesses. Each witness called will be:

- *Questioned by the employee/representative;
- *Questioned by the Investigating Officer;
- *Questioned by the Disciplinary Panel;
- *Questioned by the employee/representative to clarify particular points but not to introduce new evidence.

The witness will then leave the hearing.

At the Conclusion of the employee's/representative's response the Investigating Officer and Disciplinary Panel members may question the employee and his/her representative.

Summing-up

The Investigating Officer will then sum up his/her case but will not introduce new evidence.

The employee/representative will sum up his/her response but will not introduce new evidence.

Decision

The Disciplinary Panel must adjourn to reach a decision and as to what, if any, disciplinary sanctions are appropriate.

The Chairman will draw up a statement setting out the Panel's finding and decision.

The employee, his/her representative and the Investigating Officer will be called to hear the statement, prepared by the Chairman, and will be given details of the appeals procedure, if appropriate.

The Chairman's findings and decision will be confirmed in writing to the employee within 5 working days and will include the right of appeal and relevant timescales for the appeal.

Disciplinary Action

1. Any action will depend on the seriousness of the offence, the consequences to the Council and any mitigation presented by the employee or their representative.
2. Any action will be appropriate to the circumstances of the case having due regard to the need for reasonableness and fairness.
3. Types of disciplinary action that will be taken by the Council depending on the seriousness of the offence will be
 - verbal warning - given when the offence is minor
 - written warning - given for serious infringements of the disciplinary rules
 - final written warning - given after a written warning when there has been no improvement, or if the offence is serious, or a similar or different offence has occurred after the issue of a previous warning.
 - dismissal - given when an act of gross misconduct has occurred or where conduct or performance has not improved in spite of previous warnings.

In cases of **gross misconduct** employees will be immediately dismissed without notice or payment related to notice.

However, other disciplinary action which may be taken includes :-

- a) dismissal with due notice
- b) suspension without pay, for a specified period as an alternative to dismissal
- c) withholding of incremental progression (in cases of capability)
- d) relegation with no protection of salary, wages or bonus
- e) a combination of any of the above

Where the breach of discipline is so serious that the presence of the employee in the workplace can no longer be tolerated then it will constitute gross misconduct and the employee will be summarily dismissed. Dismissal will be effective from the date of the hearing where the decision is taken and communicated to the employee.

NO DISCIPLINARY ACTION WILL BE TAKEN UNTIL THE EMPLOYEE HAS BEEN PROVIDED WITH THE OPPORTUNITY, WHETHER THEY AVAIL THEMSELVES OF IT OR NOT, TO FULLY RESPOND TO THE ALLEGATION MADE AGAINST THEM.

If an employee does not attend a disciplinary hearing for any reason, including sickness, one further hearing will be arranged. Should the individual not attend this hearing for any reasons which are not considered by the Panel to be appropriate then the case will be heard in their absence. Employees will be offered the opportunity to be represented in their absence or make a written submission.

Management will determine the currency of any warning and shall, after 12 months of satisfactory conduct by the employee, destroy the record of warning. The record may be destroyed before the expiry of the 12 month period if the circumstances are appropriate. **NB Records of warnings and all other information relating to disciplinary action will only be held in Human Resources, managers may only keep information up to and including the completion of the disciplinary process.**

Appeals

1. Under this procedure there is no right of an appeal against the outcome of an informal discussion.
2. An employee has the right of appeal against disciplinary action as follows:
 - a) Appeal against a written warning to **a Head of Service/Team Manager**, who will hear the appeal accompanied by a Human Resources adviser and where practicable another manager.
 - b) Appeal against dismissal to the Council's Appeals Committee, which will consist of three elected Members. A representative of Human Resource will advise. A representative of **Democratic Services** will attend, at the beginning & end to constitute & close the Committee. The Human Resources representative will take notes of the hearing.

3. At the Disciplinary Hearing the employee must be notified that she/he can appeal against the formal disciplinary action. The right of appeal should also be clearly notified in the written confirmation of the action taken.
4. If an employee wishes to exercise their right to appeal, they must do so by notifying the **Head of Human Resources** within ten working days of the date of the letter confirming disciplinary action, stating the specific grounds on which the appeal is based.
5. The **Head of Human Resources** will notify the appellant (and the appellant's representatives if appropriate) of the time date and venue of the appeal hearing - and will give the appellant at least ten days notice of the date of the appeal. Seven working days prior to the appeal date there must be an exchange of documents relating to the appeal. All dates to be determined, where practicable, in consultation with the appropriate trade union representative prior to arrangements being finalised.
6. The appeal may take the form of a re-hearing of the case with both sides being entitled to call witnesses and to produce documentary evidence (excluding any new evidence), as they require, (subject to paragraph 3 below).

Conduct of Appeals

1. The appellant and or her/his representatives and the management representative will submit to the **Head of Human Resources** such written statements of the case together with such documentation as they may wish to include relevant to their case at least seven days prior to the scheduled hearing.
2. The papers will be circulated to the Panel members, the appellant's representatives and the Management representative at least 7 days prior to the hearing.
3. Only at the discretion of the panel on the advice of the Human Resources adviser will either side be permitted to offer further documentary evidence at the hearing. If accepted either side may seek an adjournment to allow proper consideration of the evidence.
4. The appeal will be conducted in accordance with procedures laid down for a Disciplinary Hearing.

The appeals Sub Committee have the power to:-

- *confirm the original decision
- *substitute some lesser penalty, (e.g.option of resignation in place of dismissal)
- *allow the appeal and dismiss the allegations
- *penalty in excess of the original panel decision but within the agreed procedure.

Disciplinary Rules

The following rules provide the basis for the standards of conduct and behaviour required by North Wiltshire District Council under its Disciplinary Procedure.

1. The aim of these rules is to provide guidance on standards of conduct and behaviour required of employees by the Council.
2. As unacceptable standards of conduct or breach of rules will result in disciplinary action being taken, it is considered necessary to provide some general guidance to ensure that all employees are aware of what is required of them.
3. Before taking disciplinary action the Council will ensure that the circumstances of the allegations have been properly investigated with a view to establishing the facts of the case, the employee has been given an opportunity to respond to the allegation and the Council's Disciplinary Procedure has been followed.
4. It is not possible to define all acts of misconduct or lack of capability which may lead to disciplinary action; however the Council's approach to the matter of discipline will be to ask "would a reasonable person be aware that disciplinary action could result from a particular **act or** omission". If the answer is 'yes' then action will be taken.

Examples of matters, which would be likely to result in disciplinary action, are given below. However, it should be noted that the examples are not exhaustive and other offences not listed will be considered as disciplinary matters as and when necessary.

Misconduct

The following are examples of matters although not pre-empting more serious disciplinary action are likely to result in employees being formally warned about their conduct or capability.

1. **Disobedience of Orders** - e.g. when an employee without sufficient cause, disobeys or omits or neglects to carry out a reasonable instruction, (whether in writing or not), including failure to observe the operational regulations and Financial Regulations of the Council.
2. **Insubordination** - e.g. when an employee is insubordinate by word, act or demeanour.
3. **Abuse of Authority** - e.g. when an employee's conduct towards a fellow employee or a member of the public is oppressive or abusive.
4. **Absence from Duty and Time-Keeping** e.g. when an employee:
 - * without sufficient cause, is absent from duty or is late on duty or other attendance;
 - * without permission or sufficient cause leaves the place of work.

5. **Neglect of Duty** - e.g. when an employee:
 - *without sufficient cause, fails to discharge the obligations which statute or the contract of employment places upon them; or
 - *by carelessness or neglect suffer any loss, damage or injury to occur to any person or property; or
 - *fail to report any matter which it is his/her duty to report; or
 - *fail to make an entry which it is a duty to make, in any book or document; or
 - *fail properly to account for, or to make a prompt and true return of, any money or property which comes into their possession in the course of their duties.
6. **Unauthorised Employment** - e.g. engaging in unauthorised employment during hours when contracted to work for the Council
7. **Deliberate Falsehood** - e.g. when an employee knowingly or through neglect makes any false, misleading or inaccurate oral or written statement or entry in any record or document made, kept or required for the purposes of the Council.
8. **Misconduct in Relation to Official Documents** - e.g. when an employee without sufficient cause destroys or mutilates any record or document made, kept or required for the purpose of the Council, or alters or erases or adds to any entry in such a record or document.
9. **Improper Disclosure of Information** - e.g. when an employee without proper authority communicates to any person information which was given to him/her in confidence as an employee of the Council.
10. **Corrupt or Improper Practice** - e.g. when an employee improperly uses, or attempt so to use, their official position for their own private advantage or for the private/ personal advantage of some other person.
11. **Damage to the Organisation's Property** - e.g. when an employee:
 - *willfully or without due care causes any waste, loss or damage to any property of the Council, or fails to take proper care thereof; or
 - *fails to report any loss of or damage to any such property issued to, or used by them, or entrusted to their care.
12. **Conduct at Work Likely to Offend Decency**
13. **Sleeping on Duty** e.g. when required to be alert and carrying out the duties and responsibilities of the post.

14. **Criminal Conduct** - e.g. when an employee has been found guilty by a Court of Law of a criminal offence, having regard to the nature of the offence and the nature of, and relevance to, the duties and responsibilities of the post.
15. **Discrimination** may constitute misconduct or gross misconduct - see separate section below.
16. **Harassment** may constitute misconduct or gross misconduct - see separate section below.
17. **Being an Accessory to a Disciplinary Offence** - e.g. when an employee connives at or is knowingly an accessory to any offence against discipline.
18. **Neglect of Health** - e.g. when an employee, without sufficient cause, neglects to carry out any instructions of a medical officer appointed by the Council or, while absent from duty on account of sickness, commits any act or adopts any conduct which could impede his/her return to duty.

Gross Misconduct

EXAMPLES OF MATTERS WHICH THE ORGANISATION IS LIKELY TO VIEW AS GROSS MISCONDUCT AND WHICH ARE LIKELY TO RESULT IN THE EMPLOYEE BEING SUMMARILY DISMISSED

Generally, gross misconduct is viewed as conduct which is of such nature that the Council is justified in deciding that it can no longer tolerate the continued presence at the place of work of the employee. The following are examples, which are neither exhaustive nor exclusive of matters, which the Council is likely to view as gross misconduct.

1. Unauthorised removal of the Council's property.
2. Theft from the Council, its Members, members of staff or the public, and other offences of dishonesty.
3. Sexual offences.
4. Sexual misconduct at work, including harassment.
5. Fighting.
6. Physical assault.
7. Deliberate falsification of time sheets flexi-time sheets, subsistence and expense claims, etc.
8. Falsification of qualifications which are a stated requirement of employment or which result in financial gain, also false information related to experience and ability.
9. Malicious damage to the Council's property.
10. Serious breaches of safety regulations endangering other people, including deliberate damage to, neglect of, or misappropriation of safety equipment.
11. Discrimination against a fellow employee or a member of the public on grounds of sex, sexual orientation, colour, race, creed, nationality, disability, age trade union activity or ethnic origin.
12. Being Under the Influence of Drink or Drugs while in work (other than those which have been medically prescribed).

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6 Nov 2007	New job titles following implementation of hybrid Senior Mgmt Structure	Elaine Orchard
April 2008	Devolution of power from Deputy Chief Executive Officers to Heads of Service/Team Managers – following changes at DCEO level	Elaine Orchard