

Wiltshire Council Human Resources Disciplinary Policy and Procedure

This policy can be made available in other languages and formats such as large print and audio on [request](#).

There are further supporting documents which should be read in conjunction with this policy. These will be made available to manager's and employees, as necessary. Employees who have any queries regarding the policy should speak to their line manager or trade union representative (where they are a member). Procedural advice can be sought from HRAdvisory@wiltshire.gov.uk

What is it?

1. Good standards of conduct are expected of all employees. These are crucial to enable the council to provide quality services to our community. The council promotes a High Performance Culture.
2. This policy and procedure sets out the approach to be taken where employee conduct and behaviour does not meet the expectations required. It provides a consistent framework for dealing with breaches so that they are managed in a timely, fair and reasonable way. It conforms to the ACAS Code and Guidance, relevant legislation and good practice.

Scope and General Principles

3. The policy applies to all Wiltshire Council employees, unless a separate policy applies under a TUPE transfer. Maintained schools and academies have their own policies.
4. For any Member appointed posts (Chief Officers and deputy Chief Officers) this policy must be read in conjunction with their terms and conditions of employment and the Council's constitution.
5. In cases of minor misconduct it is expected in the first instance that the manager will attempt to resolve the matter informally, where appropriate.
6. Examples of misconduct, including Gross Misconduct are shown at Appendix 1
7. Employees will be informed of the nature of the alleged misconduct, and have an opportunity to put forward their case in response, appropriate investigations will be undertaken before any decision on disciplinary action is made.

Step 1 - Informal Preliminary Fact Finding process (this step may be skipped depending on the nature or severity of the alleged incident)

8. Where an incident occurs that may be construed as a potential disciplinary matter the line manager (or a manager / officer nominated by the Head of Service) may meet with the employee after the incident occurs or is brought to their attention to

discuss and further understand what has happened. This should be undertaken without unreasonable delay.

9. This is an opportunity to establish the facts and for the employee to provide further information in relation to the potential allegation and is not, at this stage, a formal disciplinary investigation or hearing. There is no automatic right to be accompanied.
10. Notes of the meeting will be taken and shared with the employee.
11. Following the meeting the manager / officer will confirm to the employee whether:
 - they are satisfied with the employee's response and no further action will be taken; they may issue some informal guidance or action required of the employee; or
 - a formal investigation will be undertaken that may lead to a formal disciplinary hearing; or
 - the alleged incident is serious enough to warrant a period of paid suspension whilst formal investigations are undertaken.

Managing Safeguarding Allegations

12. Wiltshire Council is committed to safeguarding and promoting the welfare of children, young people and vulnerable adults. Where an allegation has been made involving abuse or neglect / or a risk of abuse and / or neglect to these groups, then a referral will need to be made directly to Multi-agency Safeguarding Hub (MASH) via the Team Manager or Head of Service. Where appropriate, a strategy meeting attended by appropriate Council officers, the Police, Social Care and representatives from the relevant service will be convened.
13. Internal investigations can proceed at the same time as a criminal investigation, unless the council is instructed not to do so by the police.
14. The relevant safeguarding procedures would be followed and HR advice sought regarding how to proceed with the matter in relation to the disciplinary procedure

Suspension

15. There may be instances where suspension, on normal pay, is necessary while appropriate investigations are carried out. It will only be undertaken after careful consideration and where there are reasonable grounds to do so. These include; concerns regarding tampering or destruction of evidence, pressurising witnesses or other potential risk to the business or individuals in allowing the employee concerned to continue to work. Any suspension must be authorised by the relevant Head of Service or their nominee. It should be kept in place for the shortest possible time period and reviewed regularly.
16. Suspension is not, in itself, a form of disciplinary sanction or prejudging an outcome. The suspension will be confirmed in writing.

Step 2 - Formal investigation

17. If it is considered the matter is not able or suitable to be resolved informally, the misconduct matter will be formally investigated to establish the facts of the case. Investigations will be undertaken promptly, without unreasonable delay. The nature and extent of these will depend on the matters under investigation.
18. The line manager, or the manager / officer nominated by the Head of Service, will take the role of investigating officer and carry out investigations and collect information and evidence that may be presented at a disciplinary hearing. This will have due regard to any other process which may also be undertaken by other agencies, for example, in cases of safeguarding allegations.
19. This may require the employee concerned, and others identified, to attend formal investigation meetings. Where employees are invited to take part in an investigation they will be expected to co-operate fully and promptly with the investigation process. The employee can be accompanied at these meetings. See Guidance on the Right to be Accompanied.
20. Following the formal investigation, the investigating officer will produce a report summarising their findings together with their decision of whether there is a disciplinary case to answer or not. If there is no case to answer this will be confirmed in writing to the employee.

Step 3 - Disciplinary hearing

21. Where it's decided that there is a disciplinary case to answer the employee will be invited to a disciplinary hearing. A manager/ officer not previously involved in the case will chair the hearing. The letter will confirm who will be in attendance at the meeting.
22. The employee has the right to be accompanied by a work colleague or Trade Union representative. Refer to the council's guidance on The Right to be Accompanied.
23. 5 working days' notice will be given, in writing, of the hearing date. This will include a copy of any investigation report and supporting paperwork (subject to any rights of confidentiality, in which case documents will be redacted, as appropriate).
24. At the meeting the employee will be given a full explanation of the case against them and provided with an opportunity to respond to the allegations.
25. If the employee intends to present any other supporting documentation at the hearing these must be provided to the officer hearing the case at least 2 working days in advance.
26. If the employee wishes to call any relevant witnesses this should be in line with the "Guidance for Witnesses"
27. Every effort should be made to attend the hearing. If the employee is unable to attend the hearing date set they should inform the officer hearing the case as soon as possible. If they are unable to attend with good reason, the hearing will be re-

arranged. Failure to attend this hearing without prior agreement may lead to the hearing taking place and a decision being taken in the employee's absence, on the basis of the available evidence. If the employee's companion is unable to attend, the employee should offer an alternative date, ideally within 5 working days of the original date.

28. If failure to attend the hearing is due to sickness absence an occupational health appointment will be arranged, where appropriate, to obtain advice on the employee's fitness to attend
29. At the conclusion of the hearing, the manager/officer hearing the case will adjourn to make a decision
30. The decision will be made as soon as possible and the employee will usually be notified verbally. Written confirmation of the decision will be sent , along with a copy of the notes, usually no later than 5 working days after the hearing taking place.

Step 4 - Outcome of the disciplinary hearing

31. One of the following decisions must be taken;

The allegation is not upheld

32. Where there is no evidence to support the allegation or an adequate explanation has been provided and it is determined by the hearing manger/officer that no action is warranted. The hearing officer may, however, include informal advice or management guidance, for example, guidance about future behaviour and expected standards.

Where it's decided that a disciplinary offence has been committed, one of the following sanctions will apply.

33. All warnings/dismissal will be confirmed in writing and include; the nature of the offence and reasons for the decision, any required actions such as change in behaviour/improvements required, with timescales, where appropriate, and the right of appeal.
34. Warnings are not necessarily sequential, any level can be implemented if the misconduct and circumstances warrant it.
35. If the employee has been suspended and the decision is not to dismiss then any decision notification will include when the suspension will end, if still in place.

Written warning

36. Issued where the offence is considered to be serious, or there is repetition of minor offences or evidence of failure to heed previous informal action or management guidance.
37. The written warning remains live and on file for disciplinary purposes for 12 months. Any further act(s) of misconduct within this time may result in a final written warning or dismissal.

Final written warning

38. Issued where there is further misconduct/failure to improve following a written warning already being issued and which is still live; **OR**
- where the misconduct is sufficiently serious (for example, if the employee's actions have had, or are liable to have, a serious or harmful impact on another employee, service user, customer or the council) it may be appropriate to move straight to a final written warning.
 - for a very serious offence which would normally justify summary dismissal but there are some exceptional circumstances which warrant a lesser penalty.
39. The final written warning remains live and on file for disciplinary purposes for 18 months. A further act of misconduct within this time may result in dismissal.

Dismissal

40. Issued where there is further misconduct/failure to improve following the issue of a previous warning which is still live. Or where there is a finding of gross misconduct.
41. Only a manager / officer at head of service level or above, can dismiss
42. There are two types of dismissal:
- Dismissal with notice or pay in lieu of notice, for serious misconduct which falls short of gross misconduct or for continued misconduct or failure to improve following the issue of a previous warning/s.
 - Where gross misconduct is substantiated, this is likely to result in summary dismissal, without issuing any prior warning. Summary dismissal is dismissal without notice, or payment in lieu of notice.

Step 5 – Right of Appeal

43. In line with the council's 'One Appeal Policy'

Other points to note

Action against Trade Union representatives

44. Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure will be followed.
45. Depending on the circumstances it is advisable to discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.

Criminal offences

46. If an employee is charged with or convicted of a criminal offence this is not necessarily in itself reason for disciplinary action.
47. Consideration needs to be given to what effect the charge or conviction has on the employee's suitability to do the job and their relationship with their employer, work colleagues and customers.

Grievances

48. Where an employee raises a grievance during the disciplinary process a decision will be made whether to deal with both cases concurrently or, if appropriate there may be a temporary suspension of the disciplinary process in order to deal with the grievance.

Transfer to another procedure

49. This procedure, including the investigation, may be suspended at any point where it becomes apparent that the matter might be best dealt with in line with a different policy and procedure. The employee will be advised of this and next steps.

50 Equality

Wiltshire council is committed to equality, the principles of which are set out in the [Equality and Diversity Policy](#), together with information on the Equality Act and on our public sector equality duty (PSED).

Where an employee feels that there are adjustments that would help them to deal effectively with a formal process, they should make the relevant manager/officer dealing with the case aware, at the earliest opportunity.

51 Data Protection and GDPR (General Data Protection Regulations)

Wiltshire Council processes personal data in regard to this policy in accordance with the General Data Protection Regulations (GDPR). Further details on how employee's data is used and the basis for processing it is provided in the [HR & OD privacy notice](#).

Data collected is held securely and only disclosed to individuals for the purpose of completing the policy. Inappropriate access or disclosure of employee data may constitute a data breach and must be reported in accordance with Wiltshire Council's Data Protection policy. Any such Transfer breaches may result in an investigation and could lead to disciplinary action.

Examples of conduct which may lead to disciplinary action (but not limited to) :

- Unauthorised acceptance of gifts, presentations and awards;
- Undisclosed pecuniary interest in the council's contracts;
- Unauthorised action on behalf of the council or service;
- Public criticism of the council's decisions and/or activities connected with the employee's own work;
- Unreasonable refusal to follow an instruction or insubordination including failure to observe operational regulations and policies;
- Persistent bad timekeeping; **new**
- Abuse of authority and/or where an employee's conduct towards a fellow employee or a member of the public is oppressive, abusive or disrespectful;
- Unauthorised employment;
- Improper disclosure of information, including breach of the data protection act;
- Sleeping on duty;
- Unauthorised use of the council's equipment;
- Smoking within designated no smoking areas, including council property or on council owned premises, or vehicles;
- Unauthorised absence or abuse of the sickness absence scheme.

Gross misconduct is defined as an act of such a serious nature that it fundamentally breaches the contractual relationship between the employee and employer. A finding of gross misconduct will usually result in summary dismissal

Examples of gross misconduct (but not limited to) :

- Serious breaches of Council rules, codes or policies, including but not restricted to health and safety rules, including the use of a mobile telephone whilst driving for the purposes of work ;
- Conviction of a criminal offence related to, or liable to have a serious adverse affect on the work of the employee or other employees or the credibility of the council;
- Dishonesty , including Theft and/or fraud, falsification of records or information, non declaration of information ;
- Unauthorised absence;
- Breach of the Dignity at Work policy, including Threatening behaviour, assault, fighting or bullying ;
- Deliberate and/or serious misuse of and/or damage/destruction to council property and/or records;
- Incapability at work brought on by alcohol or illegal drugs;
- Gross Negligence which causes unacceptable loss, damage or injury;
- Serious insubordination;
- Unlawful discrimination or harassment, including against customers, partnership worker, contractor;
- Deliberate abuse of the council's IT systems, including equipment and software, including using the internet and/or email to access and/or distribute material of a pornographic, offensive, obscene or inappropriate nature;
- Bringing the council into serious disrepute through actions either inside or outside of work;
- Serious Data protection breaches, unauthorised disclosure of council documents or confidential information to others inside or outside the council; **new**
- Misuse of an official position for personal gain; **new**
- Breach of any professional code of conduct applicable to a role, which could bring the council into disrepute; **new**
- Safeguarding concerns relating to conduct or behaviours which have a bearing on the safety or welfare of children or vulnerable adults. **new**