

Wiltshire Council HR Policies And Procedures
Disciplinary Policy and Procedure

Reference Number:	Final version - February 2009
Author and Members of HR Policy Sub Group.	Revisions made by the HR Advisors sub group (all authorities represented)
Date Issued	25 January 2009
1st Review Date:	
Next Review Date:	April 2010
Ratified by:	Joint Consultative Committee 12 February 2009

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1. Introduction

- 1.1 This policy and procedure covers the management of disciplinary situations that arise at Wiltshire Council. It sets out the Council's expectations of employees conduct and the consequences of breaching these in line with statutory legislation, including the revised ACAS Code of Practice (April 2009).
- 1.2 It is designed to help and encourage all employees to achieve and maintain acceptable standards of conduct in setting out the rules and procedures that will apply to ensure consistent and fair treatment for all staff.
- 1.3 This policy should be read in conjunction with the capability policy, absence management policy, end of contract for some other reason policy and the Council's redundancy policy if there are issues that overlap.

2. Policy statement

- 2.1 Wiltshire Council recognizes its responsibilities to deal with formal disciplinary matters promptly, in a firm, fair and consistent manner, ensuring objectivity is applied at all times.
- 2.2 In disciplinary matters managers, staff and recognized Trade Union Representatives will adhere to the following principles:
 - Issues will be raised and dealt with promptly. Meetings, decisions, or confirmation of decisions will not be unreasonably delayed by any party.
 - All parties will behave consistently, appropriately and professionally.
 - Managers / investigatory officer will carry out any necessary investigations to establish the facts of the case.
 - Managers will inform the employee of the basis of the problem and provide an opportunity for the employee to put their case in response before any decision is made.
 - Managers will allow an employee to be accompanied by a work colleague or Trade Union representative at any formal disciplinary meeting.
 - All employees will have the right of appeal against any formal decision made.
- 2.3 It is not possible in this policy to define all acts of misconduct, unacceptable behaviour or incapability that could lead to disciplinary action. However in Appendix A some examples are listed, including those acts that may be deemed to be gross misconduct and managers should ensure that all employees are informed of these at induction along with service specific issues. Generally, the test of reasonableness in the circumstances will apply before any disciplinary action is taken. The following question should be asked: 'Would a

reasonable person be aware that disciplinary action would result from a certain act or omission?’

3. Scope

- 3.1 The policy applies to all Wiltshire Council employees, apart from teachers and non teaching staff appointed in accordance with the Schools Standards and Framework Act 1998 and the Education Act 2002. In disciplinary matters that involve Chief / Statutory Officers of the Council these procedures will be read in conjunction with their terms and conditions of employment and Wiltshire Council’s Constitution.
- 3.2 The policy will apply in cases of alleged misconduct whether willful or gross. It does not apply to alleged incompetence, incapability or other poor performance at work which is considered not to be attributable to a willful disclination by the employee to carry out their duties, but which is thought to be attributable to a lack of skill or aptitude, or to health, or any other physical or mental quality. It also does not apply to redundancy, where a different policy is in place.
- 3.3 The policy assumes that prior to considering formal disciplinary action, Managers will have already attempted to counsel their employees on an informal basis, discussing shortcomings and arranging any training / and or advice in order to remedy any identified problems.

4. Disciplinary Procedure

The procedure the Council will follow when dealing with disciplinary matters is as follows:-

4.1 Investigatory meeting and establishing the facts

- 4.1.1 When a potential disciplinary matter arises it is important to carry out necessary investigations without unreasonable delay to establish the facts of the case. In most circumstances this will involve holding an investigatory meeting between the line manager and the employee whom an allegation has been made.
- 4.1.2 The employee will be informed that the meeting is to provide them with an opportunity to comment on the allegation as part of an investigation to establish the facts and that it is not, at this stage, a formal disciplinary meeting. A written account of the meeting should be taken as a record for both parties to refer to at a later stage if necessary.

4.1.3 Further to an assessment of the information provided, the line manager will reach one of the following conclusions that they will outline to the employee:-

- i. That a further formal investigation needs to be undertaken that may result in the necessity of arranging a formal disciplinary hearing. Part of the investigation could include formally interviewing the employee again. If a further interview is required the employee will have the right to be accompanied by a Union Representative or work colleague and an officer from Human Resources may also be present in the capacity of advisor. (The companion does not however during the course of the formal interview, have the right to answer questions on the employees' behalf or prevent the investigatory officer from asking questions that relate to the investigation).

A written account / minutes should be taken of any formal interviews and an attempt should be made to seek agreement on the accuracy of the written account /minutes.

- ii. That they are satisfied with the employee's response and the matter will be dropped without further investigation
- iii. That the allegation is potentially very serious and therefore a period of brief suspension with pay is required whilst an investigation is undertaken. (In this circumstance the employee must be told that the suspension itself is not considered a disciplinary action, but is appropriate in the circumstances. At the point of suspension the employee will be issued with a letter detailing the conditions of suspension within one working day.)

4.1.4 The line manager or another nominated officer will act as the investigatory officer. As part of the investigation the investigating officer should collect any evidence that may be presented at any disciplinary hearing, this may include interviewing relevant witnesses.

4.1.5 Further to the completion of the investigation, the line manager or nominated officer will put together a summary of their findings together with a recommendation to a senior officer who will consider whether there is a disciplinary case to answer.

4.2 Inform the employee of the allegation

4.2.1 If following the investigation, and the senior officer's recommendation it is decided that there is a disciplinary case to answer, the employee should be notified of this in writing by their line manager / Human Resources. The letter should contain sufficient information about the alleged misconduct or poor performance and its possible consequences to enable the employee to prepare to answer the case at a disciplinary meeting. The employee will be entitled to receive copies of any evidence that is to be used in the case, for example,

policy statements, minutes of any formal investigatory meetings, a copy of the investigatory report, written / photographic, or witness statements with the notification letter.

- 4.2.2 The notification letter will also outline the time and venue of the disciplinary meeting, the members of the panel who will hear the case and of the employee's right to be accompanied by a Trade Union representative or work colleague. The employee will be provided with at least 5 working days notice of the disciplinary meeting. (In exceptional circumstances whereby the potential outcome of a case could be gross misconduct there is an ability for the relevant parties to agree to extend the minimum notice to 10 working days).
- 4.2.3 On receipt of the letter of notification of the hearing if the employee intends to present any supporting documentation / witness statements these must be presented to one of the named panel members in advance of the meeting.
- 4.2.4 If the employee would like a witness(es) to attend the hearing in response to their case it is their responsibility to contact the witnesses and to inform them of the date, time and venue of the disciplinary meeting. (If you are a witness who has been called to a meeting you should approach your manager at the earliest opportunity to request the time off to attend).

4.3 Formal disciplinary meeting

- 4.3.1 If an employee is unable to attend an arranged meeting they should inform Human Resources in advance as soon as possible. If failure to attend is due to circumstances outside the employees control and unforeseeable at the time the meeting was arranged, it will be re-arranged. If the employee fails to attend the re-arranged meeting without good reason, a decision may be taken in their absence on the basis of the evidence that is available.
- 4.3.2 Those present at the meeting will normally be:-
- The panel members hearing the case (two independent parties who have not been previously involved with the case, i.e. a Manager with the delegated powers to issue disciplinary action, and a Human Resources representative)
 - Investigatory officer – this is the officer who has carried out the investigation and who will present the employers case
 - The employee (who has the allegation against them)
 - The employees companion (a work colleague, a trade union representative, or an official employed by a trade union)
 - Any relevant witnesses (from either the employers or the employees side)
 - A note-taker (person nominated from the employers side to make notes of the meeting as a record of the proceedings).

4.3.3 The format of the meeting will be as follows:

- i. The Panel will explain the purpose of the meeting is to consider whether disciplinary action should be taken in accordance with this procedure
- ii. The investigatory officer will state precisely what the allegation is and outline the case by going through the evidence that has been gathered, including calling any witnesses if appropriate.
- iii. The employee will be asked if they have any explanation for the alleged misconduct or failure to improve, or if there are special circumstances to be taken into account. They will also be given the opportunity to state their case, present evidence and call witnesses.
- iv. The investigatory officer, the employee and the panel will have an opportunity to ask questions of any party, including witnesses.
- v. The employee's companion is allowed to address the hearing to put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting and confer with the employee. If requested by the employee they can also ask questions on their behalf of the investigating officer or their witnesses. (The companion does not however, have the right to answer questions on the employees' behalf, address the hearing if the employee does not wish it, or prevent the investigatory officer from explaining their case).

4.4 Decide on appropriate action

- 4.4.1 After the Panel has heard the case they will decide whether or not disciplinary or any other action is justified. This decision will usually be reached immediately following the meeting or within two working days of the meeting. The employee will be informed of the decision in writing within two working days. One of the following decisions will be made:

i. Allegation is not upheld

The panel may conclude that the employee has provided an adequate explanation, or there is no evidence to support the allegation that has been made and therefore no disciplinary action will be taken.

ii. Stage 1 - Written Warning

Where misconduct is confirmed a written warning will be issued. The warning will set out the nature of the misconduct and the change in behaviour required (with timescale). (Issues of performance will be managed under the capability scheme)

A further act of misconduct within the next 6 months would normally result in a final written warning. The written warning will remain current and on file for the purposes of disciplinary for 6 months.

iii. **Stage 2 – Final Written Warning**

If an employee's first misconduct is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur if the employee's actions have had, or are liable to have, a serious or harmful impact on the Council.

The final written warning will set out the nature of the misconduct and the change in behaviour required (with timescale). The final written warning will remain current and on file for the purposes of disciplinary for 12 months and the employee will be informed that should there be no improvement or change of behaviour in the required timescale they may be subject to dismissal, dismissal and re-engagement on new terms and conditions with no protection of salary, withholding of incremental progression or compulsory transfer to another team or location at no expense to the Council.

iv. **Dismissal**

If conduct is still unsatisfactory and the employee fails to reach a reasonable standard or in the case of gross misconduct dismissal will normally result. Only a Service Director, or their nominated representative can dismiss. The employee will be provided, as soon as possible, with written reasons for the dismissal, the date on which employment will terminate, the appropriate period of notice and the right of appeal.

4.5 **The Appeal process**

- 4.5.1 Where an employee feels that disciplinary action taken against them is wrong or unjust they have the right to appeal against the decision. In these circumstances the employee should write to the Panel who heard the case within 10 working days of receiving the written notification of the disciplinary meeting. In the letter the employee should state the grounds for their appeal.
- 4.5.2 All appeals will be heard by an appeals panel within 20 working days of the receipt of the appeal being received. The employee will be given notice in writing at least five working days in advance of the time and place of the hearing.
- 4.5.3 The Appeals Panel consists of a Manager who has not had prior involvement with the case, and who is of a more senior level than the officers on the original panel, advised by a representative from Human Resources. At the appeal hearing both parties (i.e. the individual who is appealing against the action taken against them and the officer who is presenting the management's case) have the opportunity to state their case and to ask questions of each other. The employee may be accompanied to the appeal hearing by a work colleague, a union

representative, or an official employed by a trade union. Once they have heard the case the panel may make the following range of decisions.

4.5.4 The nominated representative hearing an appeal against the disciplinary action taken, including dismissal may:

- dismiss the appeal; or
- to allow the appeal; or
- to allow the appeal and substitute a different warning (greater or lesser); or
- to dismiss the employee.

There is no further right of internal appeal against the decision of the Appeals Panel.

5. Special cases

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

5.1.2 If an employee is charged with, or convicted of a criminal offence this is not normally in itself reason for disciplinary action. 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.

5.1.3 Where an employee raises a grievance during a disciplinary process the disciplinary process may be temporarily suspended in order to deal with the grievance. Where the grievance and disciplinary cases are related it may be appropriate to deal with both cases issues concurrently.

Appendix A

Examples of disciplinary rules (please note that this list is not exhaustive)

- i. acceptance of gifts, presentations and awards;
- ii. undisclosed pecuniary interest in the Council's contracts
- iii. unauthorised action on behalf of the Council or service
- iv. public criticism of the Council's decisions and / or activities connected with the employee's own work
- v. disobedience to orders (i.e. when an employee without sufficient cause disobeys, omits or neglects to carry out a lawful order whether in writing or not) including failure to observe operational regulations and policies
- vi. 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
- vii. unauthorised employment (i.e. engaging in unauthorised employment during hours when contracted to work for the Council, or engaging in employment during off-duty hours which is detrimental to the interests of the authority)
- viii. misconduct, in relation to official documents (i.e. when an employee without sufficient cause destroys or mutilates any record or document made, kept or required for the purposes of the Council, or alters, erases or adds to any entry in such a record or document).
- ix. Improper disclosure of information, including the breach of the data protection act
- x. Sleeping on duty
- xi. Unauthorised use of the Council's equipment
- xii. Smoking within designated no smoking areas, including Council property or on Council owned premises, or vehicles
- xiii. Unauthorised absence or abuse of the sickness scheme

Examples of acts that could be deemed to be gross misconduct (please note that this list is not exhaustive)

- i. wilful breaches of safety rules
- ii. conviction of a criminal offence related to, or liable to have a seriously adverse affect on the work of the employee or other employees or the credibility of the Council
- iii. theft and fraud
- iv. threatening behaviour, assault or fighting
- v. deliberate and serious misuse of and / or damage to Council property
- vi. incapability at work brought on by alcohol or illegal drugs
- vii. negligence which causes unacceptable loss, damage or injury
- viii. acts of insubordination

- ix. discrimination against a member of staff or the public on any grounds of gender, race, disability, nationality, ethnic origin, age, religion, belief or sexual orientation
- x. deliberately accessing internet sites containing pornographic, offensive or obscene material
- xi. bringing the Council into serious disrepute