

Warwickshire County Council

DISCIPLINARY PROCEDURE

Key points:

- Managers may discuss a misconduct issue with an employee informally before taking formal action. If this fails to resolve the problem or an informal approach is inappropriate in the circumstances the formal approach will normally be used.
- No formal disciplinary action will be taken without:
 - o a prompt and appropriate investigation to establish the facts; and
 - o a meeting at which the employee is allowed to set out their case and answer any allegations made; and
 - o the right of appeal outlined.
- Employees have a statutory right to be accompanied by a trade union representative or fellow worker at any formal meeting which could result in the issue of any disciplinary action, including appeals.
- The HR Advisory Service should be contacted in the event of any placement on alternative duties, suspension or formal process being considered.
- Confidentiality will be given the utmost importance at all stages of the procedure.
- A disciplinary record must be created in YHR within the case management module for all formal stages and relevant documents filed in HR-ER.

1. Introduction

- 1.1 Warwickshire County Council recognises that disciplinary rules and procedures help to promote good employment relations and are committed to dealing with matters in a fair and consistent way.
- 1.2 This procedure aims to help employees achieve and maintain satisfactory standards of behaviour that comply with the Council's rules and resolve misconduct issues promptly as they occur. The Council's Code relating to Employer and Employee Responsibilities can be found on the Intranet under HR at <http://www.warwickshire.gov.uk/conduct>

2. Scope

- 2.1 The procedure applies to all employees other than the following, for whom separate arrangements apply:
- Chief Executive, Section 151 and Monitoring Officers.

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- Uniformed fire officers (including fire control)
 - Schools employed staff
- 2.2 This procedure will apply to issues relating to conduct. Where issues relate to capability, consideration needs to be given to whether these issues are believed to be attributable to a wilful refusal to work. Where that is the case, this procedure should apply.
- 2.3 Where there is a willingness to perform but employees are currently unable to perform duties in a satisfactory manner, managers should refer to the Managing Performance and Capability Procedure which can be found on the Intranet under HR at <http://www.warwickshire.gov.uk/conduct>:
- 2.4 When dealing with incapability on the grounds of ill health, managers should refer to the Attendance at Work Procedure which can be found on the Intranet under HR at <https://warwickshiregovuk.sharepoint.com/SitePages/HR/Attendance-at-work.aspx>
- 2.5 Managers can move from one WCC procedure to another at a comparable stage in light of a change in circumstance and where it is appropriate to do so.

3. Procedure Principles

- 3.1 Except in cases of gross misconduct, this procedure is primarily concerned with helping and encouraging employees to improve rather than just being a way of imposing disciplinary penalties. It aims for an outcome which is fair, reasonable and constructive, and consistent with the Council's commitment to service delivery.
- 3.2 Managers are responsible for specifying the Council's standards of behaviour, enforcing rules and ensuring that any breaches are tackled promptly. Where a potential disciplinary issue arises, the manager will act in accordance with this procedure in a timely manner.
- 3.3 Before suspending, placing on alternative duties or taking formal action against an employee under this procedure, managers should consult the HR Advisory Service.
- 3.4 Before formal action is undertaken, employees should be given access to a copy of this procedure.
- 3.5 The whole process must be given a high priority by the manager and the employee concerned.
- 3.6 A decision whether or not to take disciplinary action must be made with the minimum delay and communicated to those involved.

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- 3.7 No formal disciplinary action will be taken without a prompt and appropriate investigation to establish the facts of the case.
- 3.8 Dismissal can only be carried out by a manager with the appropriate authority to dismiss, which can be delegated by the Executive Director or Director. Managers should always check that they have the appropriate authority prior to any dismissal hearing being arranged.
- 3.9 At every stage of the procedure, the relevant manager will decide whether disciplinary action is justified. If disciplinary action is not warranted, the manager will inform the employee of this decision at the earliest opportunity.
- 3.10 No employee will be dismissed for a first breach of discipline, except in cases of gross misconduct (see Appendix 1).
- 3.11 The procedure allows for the issuing of warnings, the severity of which will depend on the seriousness of the misconduct. The hierarchy of warnings is not, therefore, intended to be sequential, but a judgment needs to be made about the level of sanction appropriate to the circumstances.
- 3.12 In the case of trade union officials, no disciplinary action should be taken until the circumstances have been discussed with a full time official.
- 3.14 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 issues concurrently.
- 3.15 Confidentiality will be given the utmost importance at all stages of the procedure.

4. Informal Stage

- 4.1 Managers are responsible for clarifying standards of behaviour and dealing with minor shortcomings informally. Where appropriate this may be achieved by giving informal advice, coaching and counselling.
- 4.2 The purpose of the informal meeting is to allow the manager and the employee to discuss the issue or problem on a one-to-one basis so that the manager can encourage and help the employee to improve outside of the formal process outlined below.
- 4.3 At the end of the informal meeting the manager will check that the employee understands what needs to be done, how it will be reviewed and over what period of time. They will set a review date to re-assess the situation. The manager should advise the employee that if there is no improvement then the formal procedure may be initiated.

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- 4.4 On the review date, if the issue has improved as agreed, it is important that this is acknowledged by the manager and that they ensure that any temporary arrangements put in place to engender this improvement are also reviewed to decide their continued relevance.
- 4.5 This informal process does not constitute formal disciplinary action under this procedure.
- 4.6 If the informal stage does not bring about an improvement, or the misconduct is considered to be too serious to be dealt with informally, managers should instigate formal disciplinary action.

5. Suspension

- 5.1 An employee may be suspended from duty on full pay if:
- the employee's continued presence constitutes a risk to other staff or customers, or
 - to facilitate a full and proper investigation which their continued presence could prevent.

Managers should always consider alternatives to suspension such as temporary change to duties or transfer of workplace.

- 5.2 Employees should be informed of the terms of the suspension and that whilst it is part of the formal process it does not constitute disciplinary action. Whilst suspended, employees must not access any work premises or contact any work colleagues without the specific permission of a designated contact.
- 5.3 Details, including the reasons for the suspension, should be confirmed in writing to the employee.
- 5.4 Whilst suspended from duty, employees are able to apply for and take annual leave. In all cases employees should inform the designated contact of any intention to take leave. Unless employees have been prevented from taking leave whilst suspended, employees will not normally be granted the carry-over of leave from one leave year to the other, due to being suspended.
- 5.5 The continued need for suspension of the employee will be kept under constant review and will be monitored by the HR Advisory Service and the Trade Unions. The period of suspension should be as brief as possible.
- 5.6 On any occasion when an employee is suspended under this procedure they shall be offered the opportunity of counselling support.

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6. Investigation

- 6.1 No formal disciplinary action will be taken without a prompt and appropriate investigation to establish the facts.
- 6.2 In determining who should carry out an investigation, the manager should consider if it is appropriate to undertake the investigation themselves or if it is more appropriate to commission another officer.
- 6.3 In the case of a suspected financial irregularity the manager must always inform Risk and Assurance Services of all allegations or suspicions at the earliest opportunity. These can be reported to:
- the dedicated fraud hotline (01926 412052) or
 - by email to tellusaboutfraud@warwickshire.gov.uk.
- 6.4 The investigation may require employees and witnesses to be interviewed to establish the facts. Where possible all witness statements should be in the form of Q & A by the investigating officer and should be signed and dated. Employees should be given reasonable notice of any investigation meetings/interviews. At these the employee who is under investigation, will have the right to be accompanied by a trade union representative or fellow worker and to be made aware of the nature of the allegations or concerns being expressed. Witnesses will not ordinarily be entitled to the right to representation, depending on the appropriateness and scale of the investigation.
- 6.5 All such investigations shall be concluded as quickly as is reasonably practicable. Where an investigation has been commissioned the investigating officer will report back to the manager who commissioned the report in order for that manager to decide the next step.
- 6.6 In cases where it is decided no further action under this procedure or informal action is recommended, the manager should inform the individual as soon as possible.

7. Hearing

- 7.1 Before any formal disciplinary sanction is issued, the employee shall be given the opportunity to hear the allegations and to explain their action to the hearing manager in the form of a disciplinary hearing.
- 7.2 The employee shall (except in cases described in 7.3) be given at least 14 calendar days written notice of the disciplinary hearing detailing the nature of the allegation, any witnesses to be called and the employee's right to be accompanied by either a trade union representative or fellow worker. A copy of

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the investigation report will also be supplied. In cases where dismissal could be an outcome, the employee should be informed that the hearing may result in dismissal.

- 7.3 In cases where the allegations are admitted by the employee prior to the disciplinary hearing or the matters under investigation are straightforward, the period of written notice of the hearing may be reduced but shall not usually be less than 7 calendar days. In the event that the employee (or their representative, if a member of a Trade Union) reasonably considers that the period of notice given is insufficient for him/her to prepare for the hearing, he/she should notify the Council without delay so that the date of the hearing can be rearranged".
- 7.4 If the employee's trade unions representative or work colleague is not be available at the time arranged for the hearing it will be rearranged provided that the alternative time proposed by the employee is both reasonable and not more than five working days after the date originally arranged. A postponement will also normally be granted, where to do otherwise would seriously prejudice the ability of either party to present their case. A disciplinary hearing will only normally be rescheduled once and the hearing manager may be obliged to make a decision on the evidence available without the employee being present.
- 7.5 New allegations are not normally introduced at the hearing, and if any new matters come to light in the course of the hearing that cannot be dealt with, then an adjournment should, if necessary, be allowed.
- 7.6 The potential outcome of the hearing could be no action, action outside the disciplinary procedure (e.g. training) written warning, final warning or dismissal.
- 7.7 Following the hearing, the employee should be sent written confirmation detailing the outcome of the hearing and the employee's right to appeal.

8. Warnings

8.1 Written Warning

- 8.1.1 If the breach of discipline is a serious one, or if a further breach occurs within the currency of any informal action, a written warning may be given. This will give the reason for the warning, the improvement required, the period over which the improvement must take place and include the right to appeal. It will also inform that further action under the procedure will be considered if the improvements required are not met.
- 8.1.2 A copy of the warning will be kept and will normally be disregarded for disciplinary purposes after **12 months**, subject to continued satisfactory conduct.

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8.2 Final Written Warning

- 8.2.1 If there has been a failure to improve as required by a written warning, or if there has been misconduct which is of itself sufficiently serious to warrant more than a written warning, but the overall conduct does not justify dismissal, a final written warning will normally be given in writing to the employee. This will give the reason for the warning, inform that dismissal may result if there is no satisfactory improvement or further misconduct and will state the right to appeal.
- 8.2.2 A copy of the warning will be kept, and will normally be disregarded for disciplinary purposes after **24 months**, subject to continued satisfactory conduct.

8.3 Time Limits

- 8.3.1 There may be occasions where an employee's conduct is satisfactory throughout the period that the warning is in force, only to lapse very soon thereafter. Where a pattern emerges, the employee's disciplinary record should be borne in mind when deciding how long any current warning should last.
- 8.3.2 Exceptionally, there may be circumstances where the misconduct is so serious - verging on gross misconduct - that it cannot realistically be disregarded for future disciplinary purposes. In such circumstances it should be made clear the final written warning can never be removed and that any recurrence will lead to dismissal.

8.4 Dismissal

- 8.4.1 If the employee's conduct remains unsatisfactory despite the issuing of a final written warning, or the employee is judged to have committed gross misconduct, dismissal by the Executive Director, Director or their nominated representative will normally result.
- 8.4.2 The Executive Director or Director or their nominated representative may also agree with the employee that the following lesser penalties should apply as an alternative to dismissal:

- transfer to a similar post elsewhere
- demotion to another post, paid on a lower scale

Any action short of dismissal must be agreed to by all parties. Failure to agree may result in dismissal.

- 8.4.3 The employee will be provided as soon as reasonably possible with written notice of dismissal, the date on which the employment is to end, the reason for dismissal and the right to appeal.

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- 8.4.4 In cases of gross misconduct, employees will normally be summarily dismissed, whereby the dismissal will be with immediate effect and there will be no entitlement to paid notice.

9. Appeals

9.1 Appeal against warnings

- 9.1.1 An employee has the right to appeal against formal disciplinary action. The appeal should be made in writing within 14 calendar days of receipt of the warning.

- 9.1.2 The appeal hearing will not be in the nature of a “re-trial” before a new “judge”. In the appeal hearing the employee will need to demonstrate:

- the original hearing was in some way procedurally unfair; and/or
- the decision in the original hearing to find the person blameworthy was perverse; and/or
- the type of warning imposed was excessive in relation to the offence for which the employee was found blameworthy; and/or
- new evidence of a material nature, which could not reasonably have been known at the time, came to light immediately after the original hearing.

- 9.1.3 If, having heard the appeal, the hearing manager decides to uphold the appeal, they may withdraw the warning, replace it with a different warning or ask the previous disciplining manager to review their decision in light of the new evidence.

9.2. Appeal against dismissal

- 9.2.1 An employee has a right to appeal against dismissal to Elected Members. The appeal should be made in writing to the Delivery Lead, People Relations within 14 calendar days of receipt of written confirmation.

Either party may be represented if they wish.

- 9.2.2 The Appeal Committee shall comprise of three Elected Members. In exceptional circumstances, the Appeals Committee may delegate its functions to a panel comprising of the Chief Executive and two Executive Directors.

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- 9.2.3 The employee shall be notified in writing at least 14 calendar days in advance of the time, date and place of the hearing. The management case, along with the names of any witnesses to be called and the name of any representation, will be circulated to the employee within 14 calendar days of the hearing.
- 9.2.4 The employee shall send in their case, at least 7 calendar days before the hearing, which should contain a statement of the grounds on which they wish to challenge the original decision, setting out any essential findings of facts with which they are dissatisfied along with any documents to which they intend to refer, the names of any witnesses to be called and the name of any representation. The employee's case will be circulated to the Appeal Committee and the officer representing the Council.
- 9.2.5 The Committee may:
- uphold the original decision; or
 - may exonerate and reinstate the employee; and/or
 - issue a warning.
- 9.2.6 Following the appeal hearing, the Council's final decision will be confirmed in writing.

10. Record Keeping

- 10.1 A disciplinary record must be created in YHR within the case management module for all formal stages of the procedure together with the outcome. An informal stage should also be created where the employee is alerted to the fact that formal action will be considered as the next stage.

Documents relating to any disciplinary case should be uploaded to the Performance Section of the employee's HR-ER file using the following convention to link all the documents to a single case record - "Disciplinary " followed by the "valid from" date followed by the title of the document, eg (Disciplinary 02/04/19 Informal file note). Records are confidential and must be kept in accordance with the Data Protection Act.

- 10.2 In ordinary circumstances confidentiality is expected to be maintained. In exceptional circumstances only the operational decision may be published or made public in any way. In such cases advice should be sought from the HR Advisory Team.

Please note as a matter of policy in all formal meetings/hearings that the County Council requests that all attendees turn off any electronic devices to avoid unnecessary interruptions during the meeting and advise that the County Council does not allow recording of meetings

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GROSS MISCONDUCT THAT MAY LEAD TO SUMMARY DISMISSAL

Gross misconduct is serious misconduct such that the employer is justified in no longer tolerating the continued presence of the employee at their place of employment, and this will normally lead to summary dismissal without going through the warning procedure described.

The procedure does not attempt to define all such types of misconduct but some examples are:

- harassment or abuse of any person, whether or not an employee, on grounds of race, gender, sexual orientation, religious belief or disability, or deliberate discrimination on such grounds
- any other form of serious abuse towards, or assault upon, employees, persons in care or members of the public
- deliberately misusing, damaging or losing Council property
- removing Council property without authority
- theft, dishonesty or fraud
- improper completion of time-sheets or claims for expenses or overtime
- gross disregard for the health, safety or well-being of any other person
- being under the influence of alcohol or illegal substances whilst on duty
- gross insubordination or wilful disobedience
- providing false information to support an application for employment
- breaches of confidentiality or other action seriously prejudicial to the interests of the Council
- corruptly soliciting or receiving any benefit or advantage from any person or organisation
- gross disregard of data protection legislation
- Instances of gross negligence/gross neglect of duty

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- criminal offences which the employee has admitted or which, after proper enquiry, the Executive Director believes the employee has committed. However, criminal offences should not be treated as automatic reasons for dismissal regardless of whether the offences are relevant to the individual's employment. The main consideration should be whether the offence is one that makes the individual unsuitable for this type of work. Employees should not be dismissed solely because a charge against them is pending or because they are remanded in custody.

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