




# Wilton Town Council

## Disciplinary procedure

A procedure for handling inappropriate conduct of staff

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 [Email the clerk](#)

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### Legal context

Wilton Town Council has adopted this policy in accordance with ACAS Code of practice on disciplinary and grievance procedures issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992

### The purpose of this policy

This policy aims to set out a procedure for dealing with poor performance or inappropriate conduct of staff. Many potential disciplinary issues can be resolved informally. A quiet word is often all that is required to resolve an issue. However, where an issue cannot be resolved informally then it may be pursued formally. This procedure sets out the basic requirements of fairness that will be applicable in most cases; it is intended to provide the standard of reasonable behaviour in most instances.

10 November, 2018

### Establishing the facts of each case

1. If any concerns are raised over the performance of an employee, the council will carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing.
2. In most cases, the first stage will involve an informal meeting with the line manager, or in the case of the Clerk, the chair of the staffing committee. This will seek to resolve matters in an informal manner.
3. In misconduct cases, where practicable, different people will carry out the investigation and disciplinary hearing.
4. If there is an investigatory meeting this will not by itself result in any disciplinary action. Although there is no statutory right for an employee to be accompanied at a formal investigatory meeting, the council will permit the employee to be accompanied by a companion or representative.
5. In cases where a period of suspension with pay is considered necessary, this period will be as brief as possible, will be kept under review and it will be made clear that this suspension is not considered a disciplinary action.

### Informing an employee of a problem

6. If it is decided that there is a disciplinary case to answer, the employee will be notified of this in writing. This notification will 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. It would normally be appropriate to provide copies of any written evidence,

which may include any witness statements, with the notification.

7. The notification will also give details of the time and venue for the disciplinary meeting and advise the employee of their right to be accompanied at the meeting.

#### **Holding a meeting with the employee to discuss the problem**

8. The meeting will be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case.
9. The council and employees (and their companions) will make every effort to attend the meeting. At the meeting the council will explain the complaint against the employee and go through the evidence that has been gathered. The employee will be allowed to set out their case and answer any allegations that have been made. The employee will also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They will also be given an opportunity to raise points about any information provided by witnesses. Where the council or employee intends to call relevant witnesses they will give advance notice that they intend to do this.
10. Disciplinary meetings shall be chaired by the chair of the staffing committee and comprise three other nominated members of that committee.
11. In cases involving the Clerk, the council will seek independent professional advice and the costs will be funded from the council's reserves.

#### **Allowing the employee to be accompanied at the meeting**

12. Employees have a statutory right to be accompanied by a companion where the disciplinary meeting could result in:
  - a formal warning being issued; or
  - the taking of some other disciplinary action; or
  - the confirmation of a warning or some other disciplinary action (appeal hearings)
13. The statutory right is to be accompanied by a fellow worker, a trade union representative, or an official employed by a trade union. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany a worker. Employers must agree to a worker's request to be accompanied by any companion from one of these categories. Workers may also alter their choice of companion if they wish. As a matter of good practice, in making their choice workers will bear in mind the practicalities of the arrangements. For instance, a worker may choose to be accompanied by a companion who is suitable, willing and available on site rather than someone from a geographically remote location.
14. To exercise the statutory right to be accompanied workers must make a reasonable request. What is reasonable will depend on the circumstances of each individual case. A request to be accompanied does not have to be in writing or within a certain timeframe. However, a worker will provide enough time for the employer to deal with the companion's attendance at the meeting. Workers will also consider how they make their request so that it is clearly understood, for instance by letting the employer know in advance the name of the companion where possible and whether they are a fellow worker or trade union official or representative.
15. If a worker's chosen companion will not be available at the time proposed for the hearing by the employer, the employer must postpone the hearing to a time proposed by the worker provided that the alternative time is both reasonable and not more than five working days after the date originally proposed.

16. The companion will be allowed to address the hearing to put and sum up the worker's case, respond on behalf of the worker to any views expressed at the meeting and confer with the worker during the hearing. The companion does not, however, have the right to answer questions on the worker's behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

### **Deciding on appropriate action**

17. The staffing committee shall consider the matter and make a formal recommendation to the Council. The council shall convene a special meeting within 14 days of the staffing committee meeting to consider the recommendation and make a final decision. The council will decide whether or not disciplinary or any other action is justified and inform the employee accordingly in writing.
18. Where misconduct is confirmed or the employee is found to be performing unsatisfactorily it is usual to give the employee a written warning. A further act of misconduct or failure to improve performance within a set period would normally result in a final written warning.
19. If an employee's first misconduct or unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the council.
20. A first or final written warning will set out the nature of the misconduct or poor performance and the change in behaviour or improvement in performance required (with timescale). The employee will be told how long the warning will remain current. The employee will be informed of the consequences of further misconduct, or failure to improve performance, within the set period following a final warning. For instance that it may result in dismissal or some other contractual penalty such as demotion or loss of seniority.
21. A decision to dismiss will only be taken by a manager who has the authority to do so or the full council. The employee will be informed as soon as possible of the reasons for the dismissal, the date on which the employment contract will end, the appropriate period of notice and their right of appeal.
22. Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. But a fair disciplinary process will always be followed, before dismissing for gross misconduct.
23. Examples of acts which the council regards as acts of gross misconduct include things such as theft or fraud, physical violence, gross negligence or serious insubordination.
24. Where an employee is persistently unable or unwilling to attend a disciplinary meeting without good cause the employer will make a decision on the evidence available.

### **The right of appeal**

25. Where an employee feels that disciplinary action taken against them is wrong or unjust they may appeal against the decision. Appeals will be heard without unreasonable delay and ideally at an agreed time and place. Employees will let employers know the grounds for their appeal in writing.
26. The appeal will be dealt with impartially and, wherever possible, by a manager who has not previously been involved in the case (or in the case of the clerk, a separate sub-committee of the council convened for the purpose).
27. Employees have a statutory right to be accompanied at appeal hearings.
28. Employees will be informed in writing of the results of the appeal hearing as soon as possible.

## **Special cases**

29. Where disciplinary action is being considered against an employee who is a trade union representative the normal disciplinary procedure will be followed. Depending on the circumstances, the council may discuss the matter at an early stage with an official employed by the union, after obtaining the employee's agreement.
30. 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.

## **Procedures to be followed**

31. In undertaking a disciplinary matter, the council shall adopt the model documents and practices recommended by ACAS.