

SALISBURY CITY COUNCIL

Subject : Disciplinary policy
Committee : **Personnel Committee**
Date : **25 November 2024**
Author : Tracy Adams

Agenda Item: 11

1. Report Summary:

- 1.1. The disciplinary policy outlines the Council's approach for managing unacceptable employee behaviour.
- 1.2 The current disciplinary policy is lengthy and has caused confusion for both staff and managers when applying it.
- 1.3 Currently, only the Chief Executive Officer (CEO) has the authority to dismiss an employee. If an employee appeals a dismissal, the Council incurs additional costs to facilitate an independent appeal process. An approximate cost of £2,000 per appeal. This report recommends that the Personnel Committee review and consider adjusting the level of officer who can authorise employee dismissals.

2. Policy

- 2.1. Head of Human Resources, in consultation with Worknest (Employment Law Advisors for the Council) have re-written the policy, from section 4 with the aim to provide clarity to both staff and managers.
- 2.2. Although it is expected that staff understand what unacceptable behaviour is, this may differ across organisations people have worked. So a clearer policy can confirm the Council's expectations.
- 2.3. The tracked changes report shows the paragraphs to be deleted (by being crossed through), with the new policy highlighted in yellow.

3. Recommendation:

- 3.1 The Head of Human Resources recommends that the Personnel Committee approve the proposed amendments to the Disciplinary policy as detailed in the track changes document. These amendments include expanding the authority to dismiss employees beyond just the CEO.

3. Wards Affected: All

4. Background papers: Disciplinary policy – Tracked changes

5. Implications:

- 5.1. Financial: Reduce cost of appeals, if necessary.
- 5.2. Legal: Ensure policy complies with ACAS code of conduct.
- 5.3. Personnel: All staff – clarification may help with staff feeling clear what is expected and what the actions are if there is any misconduct.
- 5.4. Environmental Impact: None identified.
- 5.5. Equalities Impact Statement: Policy applies to all SCC employees.



Disciplinary Policy

Policy No.	Version	Author	Date Published/ reviewed	Review Due	Changes made:
HR10	1	KAB	June 11		
HR10	2	KAB	March 2015	3/18	Reformatted & Acas update on being accompanied
HR10	3	KAB	April 2017	04/19	1.3 inclusion of Staff Forum 4.1.4 clarified who makes the decision 4.2.1 changed 'should be notified and should contain to 'will'' 5.3 Insertion of process to call witnesses 5.4 communication of decision changed from 5 to 2 days
HR10	4	TA	25/10/23	25/10/24	Language in 2.2.7 updated to reflect Equality Act 2010 Updated reference of meeting to hearing in formal section of policy Updated list of gross misconduct to include working from home (not approved) or false hour reporting
HR10	5	TA	16/07/2024	25/10/2024	Provided clarification on paragraph 4 between informal and formal stages of policy
HR10	6	HeadHR	November 2024	November 2025	Clarified section 4 and rest of policy as previous policy was confusing.

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Distribution

Internal: All SCC Staff

External (if requested): Website/Councillors/Partners

Disciplinary Policy & Procedure:

1. Introduction:

1.1. This policy and procedure covers the management of disciplinary situations that arise at Salisbury City 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~~).

Commented [TA1]: Remove date so that policy doesn't become out of date following any ACAS change

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.

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This policy has been created to follow the ACAS statutory Code of Practice ~~2009~~ and to be appropriate and manageable within the limitations of being a small organisation.

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1.3. This policy should be read in conjunction with the Capability Policy, Absence Management Policy, and the Council's Redundancy Policy if there are issues that overlap.

~~It has been created in consultation with the Trade Unions and the Staff Forum and is supported by both management, the Staff Forum and those Trade Unions.~~

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Commented [TA2]: Original policy was created with Trade Unions, however confirmed with Trade Unions that if reason for change is for clarity, not to change terms and conditions that they do not need to see revision. The revisions listed below are intended to provide clarity and follow the ACAS Code.

2. Policy Statement:

2.1. Salisbury City Council recognises 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 recognised Trade Union representatives will adhere to the following principles:

- 2.2.1. Issues will be raised and dealt with promptly. Meetings, decisions, or confirmation of decisions will not be unreasonably delayed by any party.
- 2.2.2. All parties will behave consistently, appropriately and professionally.
- 2.2.3. An investigatory officer will carry out any necessary investigations to establish the facts of the case.
- 2.2.4. The employee will be informed of the basis of the problem and provided with an opportunity to put their case in response before any decision is made.
- 2.2.5. Managers will allow an employee to be accompanied by a work colleague or Trade Union representative at any formal disciplinary hearings.
- 2.2.6. All employees will have the right of appeal against any formal decision made.
- 2.2.7. The procedure will be applied in an equitable and non-discriminatory way irrespective of an employee's age, disability, gender reassignment, marital status or civil partnership, maternity or pregnancy, race, religion, sex or sexual orientation

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 role specific issues.~~

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Commented [TA3]: This is now included in paragraph 4.3 and 4.4

Employees are required to observe the rules and standards of Salisbury City Council. When standards and rules appear to have been broken and before any disciplinary action is taken, management must ensure that:

- 2.3.1. The employee could reasonably be expected to have known the rule
- 2.3.2. The rule was consistently applied
- 2.3.3. The circumstances of the case, where the rule was broken, have been fully investigated
- 2.3.4. The employee had been given an opportunity to explain their actions in accordance with the Disciplinary Policy

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 Salisbury City Council employees.

This will include all employees who transferred from Salisbury District Council in 2009 under TUPE transfer. This policy will undergo a consultation period with all employees and the Trade Union representatives to ensure it is supported by all concerned.

3.2. The policy will apply in cases of alleged misconduct whether wilful or gross. It does not apply to:

- 3.2.1. Alleged incompetence, incapability or other poor performance at work which is considered not to be attributable to a wilful 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.
- 3.2.2. Redundancy, where a different policy is in place.
- 3.2.3. To the non-renewal of fixed term contracts on their expiry

3.3. The policy assumes that prior to considering formal disciplinary action, where relevant, 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. Policy

4.1. The Council always tries to deal with disciplinary issues fairly and promptly. This procedure sets out the framework under which allegations of misconduct will be investigated and considered. While the procedure set out in this policy will be appropriate in most cases, there may be situations in which it is not practicable to comply with a particular requirement of it. When this happens the Council will do its best to deal with the matter fairly and will pay particular attention to the need to give the employee every opportunity to explain their version of events.

4.2. The Council reserves the right not to follow this procedure in full for employees who are within their first two years of employment with the Council.

4.3. Definition of Misconduct

4.3.1. Behaviour which is disruptive, disrespectful to colleagues, or which falls short of what is expected by a Council employee will be treated as misconduct under the disciplinary procedure. While employees will not usually be dismissed for a first offence a failure to remedy the behaviour or to adhere to required standards may ultimately lead to dismissal once appropriate warnings have been given.

4.4. Definition of Gross Misconduct

4.4.1. Gross misconduct is behaviour which is fundamentally at odds with the employee's duty to the Council and their colleagues. In accordance with the

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disciplinary procedure, gross misconduct will usually result in dismissal without notice, or payment in lieu of notice, even in cases of a first offence.

4.4.2. It is not possible to list every example of gross misconduct which may arise, but the following provides an illustration of the sort of conduct that will normally fall into this category – some of which are then explained in more detail below:

- 4.4.2.1. Theft;
- 4.4.2.2. Fraud, forgery or other dishonesty, including fabrication of expense claims and time sheets;
- 4.4.2.3. Unlawful discrimination, harassment, including sexual harassment, or victimisation;
- 4.4.2.4. Refusal to carry out reasonable instructions;
- 4.4.2.5. Violent or intimidating behaviour;
- 4.4.2.6. Wilful damage to property;
- 4.4.2.7. Causing loss, damage or injury through serious negligence;
- 4.4.2.8. Serious misuse of our property or name;
- 4.4.2.9. Serious insubordination;
- 4.4.2.10. Reckless behaviour posing a risk to health and safety;
- 4.4.2.11. Any act or omission constituting serious or gross negligence or dereliction of duty;
- 4.4.2.12. Sleeping on duty;
- 4.4.2.13. Bringing the organisation into serious disrepute;
- 4.4.2.14. Unauthorised use or disclosure of confidential information or failure to ensure that confidential information in your possession is kept secure;
- 4.4.2.15. Recording audio and/or video of any meeting, conversation or discussion with another person or people without the express prior consent of the person or people being recorded;
- 4.4.2.16. Making untrue allegations in bad faith against a colleague;
- 4.4.2.17. Making a disclosure of false or misleading information under our Whistleblowing Policy maliciously, for personal gain, or otherwise in bad faith;
- 4.4.2.18. Repeatedly working from home contrary to the terms of your employment contract and without the prior written approval of management;
- 4.4.2.19. Failing to work your contractual hours while working from home or as part of a hybrid working arrangement, or giving false or misleading information relating to your hours of work and activities while working from home;
- 4.4.2.20. Any illegal act during working time or on Council premises; and
- 4.4.2.21. Any act described as gross misconduct elsewhere in this handbook.

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4.5. Informal Action

4.5.1. Most minor acts of misconduct can be dealt with informally through discussions between an employee and their line manager. This may consist of management guidance or an informal warning. Notes of the meeting and outcomes should be uploaded to PeopleHR. These steps are an everyday part of the management process and no formal procedure needs to be followed in respect of them.

4.5.2. Where informal action of this kind fails to resolve an issue, or where the misconduct alleged is considered too serious, then the matter will be dealt with formally under this procedure.

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4.6. Investigation

4.7. If it is alleged that you have committed misconduct, an appropriate investigation will be carried out aimed at gathering all of the relevant evidence. You may be interviewed as part of this investigation and will have the opportunity to point the investigator towards

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any evidence that you feel is relevant. The right to be accompanied (see below) does not apply to any investigatory interview.

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4.8. Suspension

4.9. If an allegation of misconduct is made against you, then you may be suspended from your duties on full pay while the matter is being dealt with. The Council will make every effort to ensure that any period of suspension is kept as short as possible. The purpose of a suspension is either to allow an unhindered investigation to take place, or to protect the interests of the Council and its employees. During any period of suspension you may be instructed not to contact other members of staff except for the purposes of preparing for any disciplinary hearing, where specific arrangements will be made with you. This is not a disciplinary sanction and should not be seen as a predetermination of any disciplinary process.

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4.10. Hearing

4.11. Once the investigation has been carried out, the investigating officer will make a decision about whether there is sufficient evidence to warrant a disciplinary hearing.

4.12. The report will be sent to HR to work with the relevant manager.

4.13. If there is sufficient evidence for a disciplinary hearing, you will be informed of this and an appropriate date for the hearing will be arranged. This will take place within normal working hours wherever possible.

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4.14. To ensure that you have adequate time to prepare for the hearing, the Council will provide you in advance with a copy of all of the written evidence that will be considered at the hearing. In exceptional cases the Council may need to withhold the identities of certain witnesses or hold back sensitive items of evidence. This will only be done where it is considered necessary to protect individuals or the essential interests of the Council and every effort will be made to ensure that you are given as much information as possible so that a fair hearing can be conducted.

4.15. A member of the HR team will usually be present at any formal hearings.

4.16. You will be given sufficient notice of any hearing to allow you to prepare for it. While this will vary from case to case, the Council will generally try to give at least two days' notice of any hearing and in complicated cases a longer period of notice may be given.

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4.17. The purpose of the hearing will be to consider the evidence gathered during the investigation and to consider any representations made by you or on your behalf. The hearing will be conducted by an appropriate manager who, wherever possible, has not previously been involved in the case and who was not responsible for carrying out the investigation.

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4.18. The Right to be Accompanied

4.19. Employees are entitled to be accompanied at any disciplinary hearing by a fellow employee or trade union official of their choice. The Council will provide any chosen companion with appropriate paid time off to allow them to attend the hearing. It is, however, up to the employee in question to arrange for a companion to attend the hearing.

4.20. If your chosen companion cannot attend on the day scheduled for the hearing then the Council will agree a new date. This will usually be within 5 working days of the date originally scheduled. If your companion is not available within that timescale then you may need to find someone else to take their place.

4.21. The companion's role is to advise you during the hearing and make representations on your behalf; it is not to answer questions for you. However, both you and your companion are required to cooperate in ensuring a fair and efficient hearing. The companion cannot answer questions on your behalf.

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4.22. Evidence

4.23. The hearing will consider any evidence you choose to present. Should witnesses be prepared to appear on your behalf they will be permitted to do so provided that their

evidence is relevant to the issues that need to be decided. The Council will not compel or require any employee to appear as a witness on your behalf and in most circumstances evidence arising from the investigation will be presented in written form. You will be entitled to challenge any of the evidence presented but will not be entitled to cross-examine witnesses.

4.24. **Disciplinary Action**

4.25. After considering all of the evidence, including any submissions made by you or on your behalf, the manager conducting the hearing will decide on the outcome. If misconduct is found to have taken place then the usual outcome will be a **written warning** which will be placed on your personnel file.

4.26. A warning will stay active for a period of 1 year, after which it will not be taken into account in any future disciplinary action.

4.27. If however a further instance of misconduct is found to have occurred (in accordance with this procedure) during the currency of a warning – or if any misconduct is considered to be serious enough to warrant it – then, subject to the formal process above being followed, you will be issued with a **final written warning**.

4.28. A **final written warning** will usually remain active for one year, but a longer period may be specified if the manager conducting the hearing feels that the circumstances warrant it.

4.29. An employee who is found to have committed further misconduct during a period covered by a final written warning will, following a hearing conducted in accordance with this procedure, generally be dismissed.

4.30. **Dismissal**

4.31. An employee will not normally be dismissed under this procedure for a single instance of misconduct unless a final written warning is already in place. However, where gross misconduct is found to have occurred then dismissal without notice or payment in lieu will be the usual outcome.

4.32. Gross misconduct is misconduct that is so serious that it fundamentally undermines the relationship between employer and employee. If you are accused of gross misconduct this will be made clear when you are invited to a disciplinary hearing. A wide range of behaviours can amount to gross misconduct but the most common involve dishonesty, violent or aggressive behaviour, discriminatory behaviour or harassment, the wilful destruction of Council property or a deliberate refusal to obey a reasonable instruction.

4.33. **Appeal**

4.34. An employee may appeal against the outcome of a disciplinary hearing by doing so in writing stating your full grounds of appeal within one week of being notified of the outcome. The person to whom an appeal should be directed will be detailed in the disciplinary outcome letter. An appeal hearing will be convened and conducted by an appropriate member of the senior management team.

4.35. The appeal will consider any grounds the employee chooses to put forward and they will have the same right to be accompanied as at a disciplinary hearing. The result of the appeal hearing will be final.

4.36. **Employee Absence**

4.37. It is important that disciplinary issues are dealt with promptly. The Council may therefore need to proceed with a disciplinary hearing even if the employee is absent due to ill health or simply does not attend. Before hearing the matter in an employee's absence, the Council will attempt to arrange the hearing in such a way that the employee will be able to attend or to submit written representations to the hearing and/or to arrange for an appropriate representative to attend the hearing on their behalf.

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~~4.5. Disciplinary Procedure:~~

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

~~Informal Stage:~~

In a case of very low level unsatisfactory conduct or poor performance, it may be more appropriate to have an informal discussion with the employee rather than invoke the formal disciplinary procedure at this stage.

Examples of very low level behaviours within the informal stage include:

- ~~• An employee who arrives a few minutes late to work or meetings on rare occasions~~
- ~~• An employee fails to adhere to the dress code such as wearing casual clothes to a formal meeting~~
- ~~• An employee who is momentarily distracted during a meeting or work time, perhaps checking their phone briefly.~~

Such a discussion should be in private. The aim is to point out shortcomings, explain the manager's expectations and encourage improvement with the emphasis being on how the employee can remedy shortcomings.

Managers should:

- ~~— Outline the main issue(s)~~
- ~~— Listen to any explanation put forward by the employee~~
- ~~— Decide whether or not there is an issue to deal with and if not, make this clear~~

~~— Where an improvement is required, make sure that the employee understands what needs to be done, how conduct will be reviewed and over what period if this is appropriate.~~

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~~The employee should be told that the formal disciplinary procedure could be invoked if there is a recurrence of a similar incident or if there is no improvement.~~

Care should be taken to keep the meeting informal and positive. If, at any stage of the meeting it becomes obvious that the matter is more serious, the discussion should be adjourned.

Keep brief notes of the discussion for reference purposes including the date and main issues.

There is no right of representation at these meetings. The exception would be in circumstances where, for example, an employee who has learning difficulties and may need help in understanding the procedure. Other employees may need a translator, a signer or an interpreter, or help with reading or writing. HR should arrange the necessary assistance.

~~4.1.5.1. Investigatory meeting and establishing the facts~~

~~Initial investigation/Fact Finding~~

~~4.1.1.5.1.1. When a potential disciplinary matter arises, that is more significant than low level, it is important for the line manager to carry out necessary fact find meeting— initial investigations without unreasonable delay to establish the facts of the case. The nature and extent of the investigations will depend on the seriousness of the matter, and the more serious it is then the more thorough the investigations should be. It may not always be necessary to hold a formal~~

investigatory meeting if the facts of the matter are clear cut and undisputed for example.

However, there will be a minimum 'fact finding' meeting between the Line Manager and the employee about whom an allegation has been made.

4.1.2.5.1.2. The employee will be informed that the meeting is investigatory; that it provides 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.

4.1.3.5.1.3. Further to an assessment of the information provided, the Line Manager will reach one of the following conclusions that they will outline in writing to the employee (a copy to be uploaded to PeopleHR):

4.1.3.1.5.1.3.1. That they are satisfied with the employee's response i.e. there is sufficient mitigating circumstances that the conduct is within the boundaries of being acceptable and the matter will be dropped without further investigation

4.1.3.2.5.1.3.2. That a further formal investigation needs to be undertaken that may result in the necessity of arranging a formal disciplinary hearing. The employee must be clearly informed of the problem issue

4.1.3.3.5.1.3.3. That the allegation is potentially very serious and therefore a period of brief suspension with pay is required whilst an investigation is undertaken. This decision should be made in consultation with HR. The employee must be clearly told of the issue

(In this circumstance the employee must be told that the suspension itself is not 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. The period of suspension should be kept as brief as possible and be kept under review. See Appendix B for further details)

Formal Investigation:

4.1.4.5.1.4. A nominated officer other than the Line Manager will act as the Investigating Officer; where this is not possible the Line Manager will be the Investigating 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.

Part of this 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 Trade Union representative or work colleague and the HR Manager may also be present in the capacity of advisor. See Appendix C

(The companion does not however during the course of the formal interview, have the right to answer questions on the employee's 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 although all parties accept that this may not always be achievable. This wherever possible aim to be concluded within two days of the interview

4.1.5.1.5. After completion of the investigation, the investigatory officer will put together a summary of their findings.

Following the Formal Investigation:

4.2.5.2. Inform the employee of the allegation and next stage

4.2.1.5.2.1. If following the investigation, and the review of the recommendation in the investigation report, it is decided that there is a disciplinary case to answer, the employee will be notified of this in writing by their Line Manager or HR Manager within five working days of the investigation wherever possible.

The letter 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.

The employee may, as a result of the conclusions in the report, be suspended from duty on full pay pending the Disciplinary Hearing —this is likely to be the case if it is felt there is a risk to the organisation or its employees in some way. See Appendix B

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 enclosed with the notification letter.

4.2.2.5.2.2. The notification letter will also outline the date, time, and venue of the disciplinary meeting, the Lead Manager who will hear the case, and of the employee's right to be accompanied by a Trade Union representative or work colleague.

4.2.3.5.2.3. Right to be accompanied

Workers have a statutory right to be accompanied by a companion where the disciplinary hearing 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).

Please see Appendix C for details about the right to be accompanied and the role of the companion.

4.2.4.5.2.4. Notice of the meeting

The employee will be provided with at least 5 working days notice of the disciplinary hearing. (In exceptional circumstances whereby the potential outcome of a case could be gross misconduct there is ability for the relevant

parties to agree to extend the minimum notice to 10 working days).

4.2.5.5.2.5. Witnesses

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 the named Lead manager at least two days in advance of the meeting.

4.2.6.5.2.6. 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 the employee or management intends to call any relevant witnesses they should give advance notice that they intend to do this at least two days before the meeting

(If an SCC employee is a witness who has been called to a meeting they should approach their manager to request the time off to attend).

4.3.5.3. Formal Disciplinary Meeting

4.3.1.5.3.1. Failure to attend the arranged meeting

Employees and their companions must make every effort to attend the hearing. If an employee is unable to attend, they must inform the Lead Manager or HR Manager in advance as soon as possible and offer an alternative date within five working days of the original date.

If failure to attend is due to circumstances outside the employee's control and unforeseeable at the time the hearing was arranged, such as illness, it will be re-arranged.

If the employee fails to attend the re-arranged hearing without good reason, a decision may be taken in their absence on the basis of the evidence that is available. Consideration on how to proceed in such a case will be given to the seriousness of the issue; the employee's disciplinary record; their work record, position and length of service; medical opinion on whether the employee is fit to attend; how similar cases have been dealt with in the past. It may be possible to conduct the meeting by other means, such as video call or a written statement.

4.3.2.5.3.2. Those present at the hearing will normally be:

— **The Lead Manager who will hear the case and who will be someone not previously involved with the case** and the HR representative to advise

— **Investigatory Officer** — this is the officer who has carried out the investigation and who will present the employer's case

— **The employee** — who has the allegation against them

— **The employee's companion** — a work colleague, a Trade Union representative, or an official employed by a Trade Union

— **Any relevant witnesses** — from either the employer's or the employee's side

A note taker — a person nominated from the employer's side to make notes of the meeting as a record of the proceedings; this may be the HR Manager. The notes are management notes although they can be made available to the employee; the employee can make their own notes if they wish.

4.3.3.5.3.3. The format of the hearing will be as follows:

4.3.3.1.5.3.3.1. The Lead Manager will explain that the purpose of the hearing is to consider whether disciplinary action should be taken in accordance with this procedure. They will formally introduce all those present and explain the format of the hearing.

4.3.3.2.5.3.3.2. If the employee is not accompanied, the Lead Manager will remind them of the right to be accompanied and confirm that they have declined to exercise that right. If the employee still declines, the Lead Manager must record that fact.

4.3.3.3.5.3.3.3. Either the Lead Manager or the Investigatory Officer (if present) 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.

4.3.3.4.5.3.3.4. The employee will then be asked if they have any explanation for the alleged misconduct or failure to improve performance, 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.

4.3.3.5.5.3.3.5. The Investigatory Officer, the employee and the Lead Manager will have an opportunity to ask questions of any party, including witnesses.

4.3.3.6.5.3.3.6. The role of employee's companion is outlined in Appendix C:

4.3.3.7.5.3.3.7. If new facts emerge during the Hearing then it may be necessary to adjourn to investigate these and reconvene. All parties should make efforts to ensure this can take place within 5 working days of the original hearing, although it is accepted that this may not always be possible.

4.3.3.8.5.3.3.8. The Lead Manager will then summarise the main points of the discussion after all questioning is complete. They will ask the employee if they have anything further to say. The hearing will then be adjourned.

4.4.5.4. Decide on appropriate action

4.4.1.5.4.1. After the Lead Manager has heard the case, they will adjourn to have time to digest and reflect what has been said, and to decide whether or not disciplinary or any other action is justified.

This decision will usually be reached immediately following the hearing or within two working days of the hearing. All decisions will be confirmed in writing.

The employee will be told if the decision cannot be reached on the day. They will

be informed of the decision in writing within two working days. They will be told of their right to Appeal.

One of the following decisions will be made:

4.4.1.1.5.4.1.1. Allegation is not upheld

The Lead Manager 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.

4.4.1.2.5.4.1.2. Stage 1 – Written Warning

Where misconduct or poor performance 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). It will also outline the possible consequences of further misconduct or failure to improve within the set period.

A further act of misconduct within the next 6 months would normally result in a final written warning. The employee will be told that the written warning will remain current and on file for the purposes of disciplinary for 6 months. Exceptionally the warning period may be extended depending on the circumstances of the case.

4.4.1.3.5.4.1.3. Stage 2 – Final Written Warning

If an employee's first misconduct is sufficiently serious or they have a current warning about conduct, it may be appropriate to move directly to a final written warning. This might occur for example, 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, the change in behaviour required (with timescale), the likely consequences of further misconduct or failure to improve. The employee will be told that the final written warning will remain current and on file for the purposes of disciplinary for 12 months. Exceptionally the warning period may be extended depending on the circumstances of the case.

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.

4.4.1.4.5.4.1.4. 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 the City Clerk or Deputy City Clerk can dismiss an employee. 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.

4.4.1.5.5.4.1.5. Dismissal without notice

If any employee commits a serious breach of discipline considered to be gross misconduct, then dismissal without notice or without payment in lieu of notice will result.

Although some acts, termed gross misconduct are so serious in themselves or have such serious consequences, they may call for dismissal without notice for a first offence — a fair disciplinary process must always be followed.

Alternative penalties to dismissal

Under most circumstances, the disciplinary outcomes listed above will be applied where they are thought to be appropriate. There may however, be very exceptional circumstances and factors that could lead the Lead Manager to consider alternatives to dismissal

The following alternative course of action could be considered and imposed:

- Compulsory move to another role which is broadly comparable to the employee's current job
- Compulsory move to a different role and demotion (the grade to be determined by the Lead Officer) if a suitable vacancy exists which is within the skills and competency range of the employee
- Demotion
- Suspension without pay
- Loss of an increment
- The imposition of a final written warning as an alternative, but with a life (which could be extended indefinitely) to be determined by the Lead Manager (advice should be sought before this particular option is invoked). The employee would be made aware of the special circumstances.

Note that in all the above circumstances, the following conditions apply:

- No protection of earnings or compensation for lost benefits/terms and conditions of employment as a result will be payable
- If an employee is told to move jobs as an alternative to dismissal and they refuse to accept such a move, the penalty will revert to being that of dismissal
- the option to move/demote an employee will only be capable of being applied if suitable vacancies exist at the time. If there are no suitable vacancies then one of the alternatives or dismissal will be the penalty. Posts will not be created to accommodate a move.

5.6. The Appeal Process:

5.1.6.1. Where an employee feels that disciplinary action taken against them is wrong or unjust, they have the right to appeal against the decision. Appeals may be raised on any number of grounds, for example: new evidence, undue severity or inconsistency of penalty.

In these circumstances the employee must write to the Lead Manager who heard the case, within 10 working days of receiving the written notification of the outcome of the disciplinary hearing.

In the letter the employee must state the exact grounds for their appeal, how they wish to be contacted to allow expedient organisation of the Hearing, the name and contact

details of the Trade Union representative or colleague who will accompany them, and finally the names and reasons of any witnesses they wish to call

5.2.6.2. All appeals will be heard in an Appeal Hearing 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 date, time and place of the hearing.

5.3.6.3. The Appeal Hearing will consist of an Appeal Officer who is, wherever possible a manager who has no prior involvement with the case, and who is, wherever possible, of a more senior level than the officer at the original Disciplinary Meeting, advised by the HR Manager. At the Appeal Hearing both parties (i.e. the individual who is appealing against the action taken against them and the Lead 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 Trade Union representative, or an official employed by a Trade Union. See Appendix C.

There can be witnesses at an Appeal Hearing. If the employee wishes to call witnesses, it must be made clear that they must tell the Council whom they wish to call and then the Council, usually the HR Manager will contact them as a neutral person to invite them to attend and to explain the process.

5.4.6.4. Once they have heard the case, and with a proper adjournment to reflect and consider all issues, the Appeal Officer hearing an appeal against the disciplinary action taken, including dismissal may make the following range of decisions

5.4.1.6.4.1. dismiss the appeal and confirm the original disciplinary penalty, or

5.4.2.6.4.2. allow the appeal; and clear the penalty from the record, or

5.4.3.6.4.3. allow the appeal and reduce the penalty or vary the condition attached to the penalty

Employees will be informed of the results immediately after the Hearing and it will then be confirmed in writing as soon as possible, ideally within two working days. In some cases the Appeal Officer may decide to give a reserved judgement in which case the Hearing will be adjourned and the decision communicated writing as soon as possible, ideally within five working days.

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

In exceptional cases the Appeal Officer may find that the original disciplinary hearing failed to follow the correct procedure and that this was significant enough to have had an impact on the outcome. In this case only they may require that another Disciplinary Hearing is convened with a new Lead Manager.

6.7. Special Cases:

6.1.7.1. Trade Union Representative

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.

6.2.7.2. Criminal Offence

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.

6.3.7.3. Raising a grievance during the disciplinary process

Where an employee raises a grievance during a disciplinary process, the 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.

6.4.7.4. Responsible Financial Officer (RFO)

The Council's RFO is the Finance Officer. The following procedure must be followed when there is a need to undertake disciplinary action against the RFO.

Suspension

The RFO may be suspended whilst an investigation takes place into alleged misconduct. The suspension will be on full pay and last no longer than two months.

Investigation

No other disciplinary action may be taken in respect of the RFO except in accordance with a recommendation in a report made by a designated independent person. The designated independent person must be such person as may be agreed between the Council and the employee concerned or, in default of such agreement, by the Secretary of State.

Dismissal

A Committee/Sub-Committee of Full Council may dismiss the RFO and is likely to be the Policy and Resources Committee. That Committee/Sub-Committee must include the Leader of the Council or their Deputy.

Full Council must approve the dismissal, before the notice of dismissal is issued.

6.5.7.5. Senior Management Team

The Leader of the Council CEO will be the Lead Manager in any disciplinary hearing.

Dismissal

No such officer shall be dismissed until the HR Manager has notified the Chair of Personnel Committee and every member of the Policy and Resources Committee of:

6.5.1.7.5.1. the name of the person it is proposed to dismiss;

6.5.2.7.5.2. any other particulars relevant to the dismissal;

6.5.3.7.5.3. the period within which any objections to the dismissal must be made;

and

and either:

the Chair of Policy & Resources Committee, within the period specified in the notice referred to in paragraph c) above, has notified the HR Manager that neither they nor any other member of the Policy & Resources Committee has any objection to the dismissal; or

the HR Manager has notified the person wishing to carry out the dismissal that no objection was received within that period from the Committee;

or

the person wishing to carry out the dismissal is satisfied that any objection received from the Policy & Resources Committee within that period has been considered and found not to be material or well founded.

Full Council must approve the dismissal before notice of dismissal is issued.

The member of Senior Management who is being dismissed has the right of appeal against the decision. The Appeal Panel will in these circumstances consist of the HR Sub-Committee.

Appendix A

Examples of types of conduct which are unacceptable and which could lead to disciplinary action are given below (please note that this list is not exhaustive)

Depending on the degree of severity of the misconduct or its effect on the Council or the employee's post, the issue may be classified as gross misconduct.

- **General** — failure to comply with any Council or departmental work rules and reasonable requirements according to a job description and the contract of employment; outside employment inconsistent or incompatible with employment with the Council; unauthorised action on behalf of the Council. 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)

Council's policies — failure to comply with the Council's policies and procedures, including 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

Unauthorised absence or abuse of the sickness scheme

Smoking within designated no smoking areas, including Council property or on Council owned premises, or vehicles
- **Unacceptable work performance** — lapses in work standards, errors, negligence, unacceptable quality or quantity of work output; as a result of a measure of personal blame of deliberate actions or wilfulness on the employee's part, for example, arising from a lack of motivation, inattention, idleness or deliberate under performance. Sleeping on duty.
- **Health and safety** — failure to comply with health and safety requirements; conduct which may result in an action against the Council for negligence or for breach of duty of care for oneself, a colleague or client.
- **Lapses of conduct** — improper, disorderly or unacceptable conduct; Unprofessional behaviour, insubordination, use of inappropriate language, lack of attention to personal hygiene, abrasive relationships and other unacceptable behaviour; conduct at work or outside work (criminal or otherwise) which would bring discredit to the Council's reputation; public criticism of the Council's decisions and / or activities connected with the employee's own work.

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
- Undisclosed pecuniary interest in the Council's contracts
- **Discrimination** — failure to observe the high standards required by the Council of its employees concerning non discriminatory practices and behaviour.
- **Time keeping/absence** — persistent late attendance, inadequate time keeping, abuse of flexible working systems or home working arrangements; unacceptable levels of absenteeism; unauthorised absence.

- **Misuse of Council property and assets**—wilful or careless loss, damage to or misuse of equipment, property, assets, facilities; financial irregularities. Unauthorised use of the Council's equipment
- **Information**—making false, misleading, malicious or inaccurate oral or written statements; unauthorised alteration or destruction of records or documents; failure to report or record any material which is required to be reported or kept; improper disclosure of information, inappropriate use of information technology. Improper disclosure of information, including the breach of the data protection act.

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);

Gross Misconduct:

The following list provides examples of acts which are normally regarded as gross misconduct (please note that this list is not exhaustive)

- wilful breaches of health and safety rules
- 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
- theft and fraud
- physical violence, threatening or intimidating behaviour, assault or fighting
- deliberate and serious misuse of and / or damage to Council property
- incapability at work brought on by alcohol or illegal drugs
- negligence which causes unacceptable loss, damage or injury
- acts of serious insubordination
- 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
- Deliberate acts of victimisation or harassment
- deliberately accessing internet sites containing pornographic, offensive or obscene material
- Serious breaches of the Council's Acceptable Use of the Internet and Email policy, including where an employee seriously or persistently contravenes published IT and security guidelines and regulations
- Bringing the Council into serious disrepute
- Serious breach of confidence
- Where an employee's conduct at work is like to offend common decency
- Where an employee knowingly falsifies any document or makes any false, misleading or inaccurate statements in any record, document or to another person
- Where an employee knowingly makes false claims for financial reimbursement, with the intention of obtaining from the council a payment to which they are not entitled
- Where an employee commits an act outside of work hours which is incompatible or inconsistent with their duties to the council or which is likely to bring discredit upon or lead to a loss of confidence in the service in which they are employed
- Where an employee maliciously and falsely accuses another of harassment or bullying or makes other untrue allegations in bad faith against a colleague
- Repeatedly working from home, contrary to the terms of your employment contract and without the prior written approval of management

- Failing to work your contractual hours while working from home or as part of a hybrid working arrangement or giving false or misleading information relating to your hours of work and activities while working from home

Appendix B

Suspension:

In certain circumstances, such as cases involving:

- possible gross misconduct
- relationship break-downs
- possible risks to property, employees or the public
- disruption to the effective and efficient operation of the services of Salisbury City Council
- certain nominated posts e.g. the RFO

An employee may be suspended before and/or during the disciplinary investigation. Suspension should only be imposed after careful consideration and should not be used as a matter of course.

Key points:

- a. Suspension is not a disciplinary penalty but is intended to allow the investigation to be carried out unhindered and to protect the employee from further allegations.
- b. During any period of suspension the Line Manager should remain in contact with the employee to update them on the progress of the investigation. The employee must be made aware that they will be required to be available during normal working hours to attend any investigation interviews.
- c. If suspension is not considered appropriate at the commencement of this process, it may be that the progress of the investigation will reveal aspects of the case that were not known at the outset, which may result in this decision having to be reviewed. Suspension may occur at any time during the investigation. At no time should such an action be regarded as a disciplinary penalty.
- d. The employee will receive full pay in accordance with the contract of employment and any regular payments averaged over the 12 weeks immediately before the date of suspension.
- e. During the period of suspension the employee is required not to visit council premises nor to contact colleagues, councillors or other people they work with.
- f. It is important that whenever suspension is imposed, the decision is reviewed reasonably frequently during the disciplinary investigation to ensure that it is not unduly protracted. Suspension should normally be as brief as possible and not normally for more than 15 working days. If the suspension is for more than 15 days the employee will be given a written reason why the extension is necessary.
- g. The Lead Manager should confirm the suspension in writing within five working days. Suspension may be lifted at any time if:
 - the progress of the investigation makes it clear that suspension is no longer necessary
 - on completion of the investigation it is not considered necessary to convene a disciplinary hearing
 - following a hearing, the employee is found not to be at fault.

In these circumstances, the lifting of suspension would be confirmed in writing, to the employee together with details of when s/he should next report for work.

Appendix C

Right to be accompanied (updated March 2015):

Workers 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).

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.

Under the ACAS Code, the Council 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 should 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.

To exercise your statutory right to be accompanied, you 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, you should provide enough time for the Council to deal with the companion's attendance at the meeting, *at least one working day is requested*. You should also consider how you make your request so that it is clearly understood, for instance by letting the Lead Manager know in advance the name of the companion where possible and whether they are a fellow worker or trade union official or representative.

If your chosen companion will not be available at the time proposed for the hearing by the employer, the Council must postpone the hearing to a time proposed by you provided that the alternative time is both reasonable, mutually agreed, and not more than *five working days* after the date originally proposed. If a date cannot be agreed within this time scale then the Council will unilaterally set a date. If you do not attend, the hearing will take place in your absence.

The chosen companion is permitted to address the meeting or appeal hearing to put and sum up your case, respond on your behalf to any views expressed at the meeting and to confer with you during the meeting or Appeal Hearing. The companion does not have the right to answer questions on your behalf, address the hearing if you do not wish it or prevent you from explain your case.

If you need a signer or translator during the course of a meeting or appeal hearing this person will attend in addition to the representative.

Commented [TA4]: Clarified process rather than making amendments to particular sections.

This has been reviewed by Worknest who offer legal advise to the Council

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