



DISCIPLINARY POLICY AND PROCEDURE

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Revision history

Revision Date	Summary of changes
18 May 2023	Final Draft
23 Nov 2023	Employment Committee
	AD Op, Reg & Enf / Chair Employment Committee Minor process updates - no policy changes made

Approvals

Name	Approved
Leadership Team	21 June 2023
ELG	18 April 2023
Head of Paid Service	25 October 2023
Employment Committee /Full Council	
Governance/ Chair Employment Committee	

Document review plans

This document is subject to regular review. Updates shall be made in accordance with business requirements and changes will be with agreed in consultation with the Employee Liaison Group.

Distribution

The document will be available on Share point. and available to those employees without Sharepoint access via their manager or HR.

1. Disciplinary Policy

Introduction

Lichfield District Council aims to support all managers and employees to deliver excellent services to our residents and communities. As public servants, local government employees are expected to abide by the highest standards of conduct and behaviour. Normally this will be achieved through providing clear advice and training, managing fair and robust policies and procedures, and having clear and open communication with our employees.

However occasionally situations arise where expectations are not met, and where possible the Council will work with employees to bring about improvement. It is clearly in the interests of everyone within the Council for formal disciplinary action to be avoided wherever possible, however where this is not possible the Disciplinary Policy and Procedure provides a fair and transparent way to deal promptly and respectfully with difficulties that may arise as part of the working relationship.

The Disciplinary Policy forms a key part of the contract of employment with the Council. Managing poor performance for reasons of health or capability are dealt with under different policies and procedures.

The Council's Code of Conduct, Disciplinary Procedure, and the following policies are associated with this document:

- Grievance Policy and Procedure
- Prevention of Bullying and Harassment Policy
- Managing Attendance Policy and Procedure
- Procedural arrangements regarding investigations and suspensions as outlined in the relevant Appendices to the Disciplinary Procedure Policies and procedures covering issues relating to data protection, confidentiality, and information security.

Aims of the policy

This policy will:

- Promote high standards of conduct and efficient and safe performance throughout the Council
- Ensure that all employees can understand the standards of conduct and behaviour expected from them and the consequences of continued failure to meet these standards
- Enable managers and employees to agree suitable goals and timescales for improvement in an employee's Conduct. Support the improvement of standards of conduct and behaviour which fall short of Councils expectations.
- Ensure that disciplinary action is fair and reasonable in the circumstances of each case
- Ensure that disciplinary action is carried out in a manner that is equitable and consistent and timely under the circumstances and within the resources available to Council at the time.

Who the policy covers

The Disciplinary Policy and Procedure covers all categories of Council employees whether full-time or part-time, permanent, or temporary, except the Chief Executive, the Chief Financial Officer (Section 151 Officer) or the Monitoring Officer who are covered by different statutory procedures.

The Disciplinary Policy applies to employees who are Trade Union representatives. If disciplinary action is considered against a trade union representative the manager should immediately seek advice from HR to ensure that the council advises the union.

HR will not discuss details of the allegations with the trade union officials without the employee's agreement.

Employees whose service is terminated during or at the end of their probationary period are not covered by the Council's Disciplinary Policy and Procedure so long as the dismissal is within the timescales of the Probationary Policy and the reason for the dismissal is that the employee is not suitable to be confirmed in their post during the probationary period.

In applying this policy, the council will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010) age, disability, sex, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation. In addition, the council will ensure that employees and job applicants are not unreasonably discriminated against on the basis of other characteristics including socio-economic status, political affiliation, and trade union membership. An Equality Impact Assessment is used for all policies and procedures.

Roles and responsibilities

The Chief Executive has overall responsibility for ensuring that the Disciplinary Policy and Procedure is managed appropriately.

Managers

Managers are responsible for communicating the required standards of conduct to the Council's employees and for managing the procedure appropriately.

All managers are expected to:

- Familiarise themselves with this policy
- Apply the arrangements set out in this policy in a fair, consistent, and professional manner
- Manage unsatisfactory standards of behaviour and conduct within the workplace in accordance with this policy
- Provide employees with appropriate training to ensure they understand their obligations
- Ensure that matters are investigated confidentially at the correct level of the policy, and as appropriate and quickly as is reasonably practicable
- Ensure they have the correct levels of authority and are impartial when dealing with the disciplinary action
- Ensure a decision to suspend is made by a manager with the correct level of authority to do so
- Keep accurate records and maintain them confidentially. This will include providing timely and relevant information to the HR team, including a summary of each disciplinary, including the decision made and the rationale for the that decision
- Follow any instructions provided by HR or Leadership Team on the practical application of this policy

Employees

Employees are responsible for complying with the standards set out in the Council's Code of Conduct and Disciplinary Policy and Procedure and for following any local rules and regulations required for carrying out their job safely and effectively on behalf of the Council.

To ensure they can achieve this, employees should:

- Familiarise themselves with this policy
- Ensure they comply with any company policies procedures, processes, and rules at all times
- Perform their work to the standard set within the OKR framework
- Maintain confidentiality
- Behave in a professional, honest, and ethical manner

HR

HR is responsible for advising and supporting managers in the application of the Disciplinary Policy and Procedure. Further details can be found on the council's intranet. HR should:

- Ensure the maintenance, regular review and updating of this policy
- Ensure managers are correctly applying the policy
- Ensure the policy is available on the intranet
- Monitor and evaluate the practical application of this policy

Expected Standards of Conduct

Whilst working or Lichfield District Council, employees should always maintain professional and responsible standards of conduct. Expected standards are included in the Code of Conduct. An employee should observe all terms and conditions of their employment contract, comply with all ethics and independence obligations, all relevant standards and reasonable instructions given by managers and act in good faith and in the best interests of Lichfield District Council's business, suppliers, employees. Each and every incidence of misconduct will be dealt with on its merits and reflect the particular circumstances of the case. Levels of misconduct are outlined in Appendix 1.

Principles

Supportive and corrective rather than punitive

The procedure is supportive and corrective rather than punitive and each case dealt with under the procedure will be considered on its own individual merits. Managers will initially aim to resolve minor conduct issues through an informal approach providing coaching and guidance to support colleagues in reaching the required standards.

Conduct and behaviour should be managed by providing constructive feedback and treating each other with dignity and respect.

Timely

The council will make every effort to deal with the disciplinary allegations as quickly as possible. Where there is a delay, the colleague will be notified of the reason and when the decision is likely to be made.

Confidentiality

Managers must ensure that any information relating to concerns about an employee's conduct are disclosed only to those who have a direct involvement in dealing with these concerns and must emphasise the need for confidentiality. However, there may be times when information will need to

be shared e.g., for health and safety reasons or to comply with statutory reporting requirements for safeguarding.

Companion

An employee who is invited to attend a meeting under this disciplinary policy (except investigatory meetings) has the right to be accompanied at the meeting by a colleague or a workplace forum representative or trade union official. It is the employee's responsibility to arrange to be accompanied, and to consider whether their proposed accompanying colleague is suitable, willing, and available to attend.

Acting as a companion is voluntary and employees are under no obligation to do so. If a colleague agrees to accompany the employee, they will be allowed reasonable time off from their duties to accompany the employee.

The employee may request a postponement if the accompanying colleague is not able to attend the meeting. This will usually be granted provided that the alternative date is within 5 working days of the original date set for the meeting, and subject to other attendee's availability.

A companion can:

- Support the employee they are accompanying, including speaking on behalf of the employee with the employee's consent
- Ask questions to increase their knowledge and understanding of the issues being discussed
- Confer with the employee
- Where the employee wishes, write up the employee's case

A companion cannot answer questions on behalf of the employee.

Right to appeal

An employee has a right to appeal any disciplinary action.

2. Disciplinary procedure

Informal process

Many potential disciplinary issues can be quickly resolved informally. As part of their normal managerial responsibilities, the Council's managers should ensure that minor incidents of inappropriate conduct and/or behaviour are always brought to an employee's attention as soon as possible. Many potential disciplinary issues can be resolved between a manager and an employee using feedback and structured review periods with an improvement note on the file for a six-month period. However, managers must be mindful of the requirements of the Council's services and not hesitate to act where it is merited.

Potential disciplinary issues must always be given high priority by the manager with the employee concerned and any decision to take or not to take disciplinary action must be made with minimum delay and immediately communicated to all those involved.

The Council appreciates that each individual case will vary depending on the specific circumstances. The principles on this Policy will apply to all disciplinary cases within the Council. Managers, employees, and trade union representatives should remember that the Disciplinary Procedure

contains steps which may not be relevant to some cases. Similarly, the circumstances of a case may result in some adjustment to the application of certain steps. Any deviation from the normal Disciplinary Procedure will require approval from Human Resources.

The Council commit to conducting disciplinary proceedings in a manner that is consistent with the principles of natural justice. Investigations into allegations of misconduct will be undertaken in a way that is timely, impartial, and proportionate to their seriousness and complexity. Employees against whom allegations of misconduct have been raised will be formally notified of the outcome of the process, together with the rationale behind any decisions made or sanctions imposed.

Examples of levels of misconduct and the disciplinary sanction most likely to be applied are provided in Appendix 1.

Any actions/steps within the Disciplinary Procedure should be implemented speedily whilst always maintaining confidentiality and keeping relevant parties informed of what is going to happen.

Managers are required to seek advice from HR before invoking the formal Procedure. No formal disciplinary action will be taken under this Policy and Procedure without a full and proper investigation.

Establish the facts of each case

At the first indication of a breach of the Disciplinary Procedure, the Manager should, subject to the caveat below, raise this in a one-to-one discussion with the individual(s) believed to be involved to advise of the possible breach of the procedure and the potential for disciplinary action. If, after this discussion the Manager believes there is no case to answer no further action will be taken.

A one-to-one discussion will not take place if it is believed that in doing so it would jeopardise any further investigation. Where the manager believes that to do so would jeopardise investigations the manager should immediately seek advice from HR services.

Where the manager is confident that further action is required and to do so would not jeopardise subsequent investigations, the Manager should notify their Assistant Director who will review the case. The Assistant Director will conclude whether there is a requirement to continue with the investigation and will appoint an appropriate manager to conduct the investigation. The manager investigating the case will be known as the investigator. The investigating officer will be an independent manager, line manager or service manager. In serious or complex cases, the council may appoint an external investigator. The Assistant Director will agree the expected timeframe for investigation with the investigating officer. The investigator must advise the AD if this timeframe becomes unreasonable.

An investigatory meeting should not itself result in any disciplinary action but if the case is straightforward, and a breach is freely admitted by the employee it is possible to seek an agreed outcome proposal in order to conclude the case.

Inform the employee of the problem and invite them to an Investigatory Meeting

If the Assistant Director decides an investigation is required, the employee must be notified as soon as possible. This notification should contain enough information about the alleged misconduct and its possible consequences for the employee to help them to prepare to answer at an investigatory meeting. The Investigating Officer will hold the investigation meeting, accompanied by a note taker. An investigatory meeting is designed to collect evidence, to put the allegations to the employee and

to allow the employee to give their version of events and provide an initial response to the allegations. Minutes of the meeting will be taken, agreed by both parties, and maybe submitted in evidence at any subsequent disciplinary hearing.

The procedure for setting up and conducting an investigatory meeting is set within the Disciplinary Procedure, this will need to be followed in line with the Policy.

Outcome of the Investigation

At the end of the investigation, the investigating officer must determine whether there is a case to answer. The employee will be advised in writing if there is no case to answer and the disciplinary matter is then concluded.

If during, or at the end of an investigation, the employee accepts the allegations against them there is no need to automatically proceed to the next stage. An agreed outcome may be an acceptable way forward (see appendix 2). By its very definition, an agreed outcome can only be considered where both the employee and the council agree and only in cases where should it have progressed to hearing then the sanction is unlikely to have been dismissal.

Because it is an agreed outcome there is no option to appeal.

If there is not an agreed outcome, the next stage will be a disciplinary Hearing. In usual circumstances, the Hearing will be chaired by an independent Assistant Director or third tier senior manager.

Hold the disciplinary hearing with the employee

The employee must be advised in writing of the allegations, whether these are considered as potentially misconduct, serious misconduct or gross misconduct, the possible sanctions if the case is proven, the date, time and location of the Hearing, the name of the Chair of the Hearing and the employee's right to be represented. The letter must provide at least 5 working days' notice of the Hearing. Copies of any written evidence, including the Investigator's Report, and all witness statements, will normally be provided with the notification.

The disciplinary hearing should be held without unreasonable delay but should allow reasonable time for the employee to prepare to answer the allegations against them.

If the employee, or their representative is unable to attend the disciplinary hearing, the Hearing manager or HR should rearrange the hearing within a reasonable timescale, normally within 5 working days of the original date.

If the employee fails to attend the rearranged hearing the Chair of the Hearing can decide on the evidence available and without the employee's input.

Decide on the appropriate action

The Chair will consider the appropriate outcome and sanction to be applied, considering all the evidence, and deciding if each allegation is upheld based on a genuine belief and that the outcome is reasonable, considering the outcome of similar cases within the Council, the employee's previous record and any mitigating circumstances and based on the evidence presented.

Outcomes can be:

- Allegations not upheld. No further action
- **Where the allegations have been upheld:**
- Advice provided
- Verbal warning (retained on the employee's personal file for 12 months)
- Written warning (retained on the employee's personal file for 12 months)
- Final written warning (retained on the employee's personal file for 2 years)
- Final written warning plus action short of dismissal (e.g., a contractual penalty such as demotion, issued where mitigating circumstances mean dismissal is not appropriate)
- Dismissal (with or without notice)

The employee will be notified in writing of the nature of the outcome of the hearing, any sanction to be applied, any changes in behaviour required, and any right to appeal within 10 working days of the hearing.

Any warning issued to an employee must clearly state that the consequences of any further misconduct. The duration of the warning will be stated in the letter and any further breaches will restart disciplinary proceedings

Examples of levels of misconduct and the disciplinary sanction most likely to be applied are provided in Appendix 1.

Dismissal

Dismissal can be the outcome of a finding of gross misconduct or continued unsatisfactory behaviour while a final written warning is still in force. If an employee is dismissed for an act of gross misconduct the penalty will normally be summary dismissal without notice or payment in lieu of notice.

The employee should 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.

A decision to dismiss can only be taken by a member of Leadership Team, where they have the delegated authority to do so.

No employee will be dismissed for a first breach of discipline, except in the case of gross misconduct.

Provide employees with an opportunity to appeal

If an employee feels that the disciplinary action taken against them is wrong or unfair, they can appeal against the decision.

Appeals against dismissals will be heard by a member of the Leadership Team previously uninvolved in the case. Appeals against other disciplinary sanctions will be heard by a manager more senior than the Hearing Officer.

Employees must set out in full the grounds of their appeal in writing to a member of Leadership Team within 10 working days of the date of the letter advising of the outcome of the Disciplinary Hearing.

An Appeal Hearing is not an opportunity to re-run the Hearing. Normally, grounds for appeal will be based on the following: the conclusion of the Hearing drawn from the evidence presented was wrong; evidence was not presented to the Hearing; or the sanction was disproportionate.

The appeal hearing will be arranged without unreasonable delay and normally within one month of the outcome of the disciplinary meeting.

The Investigator will work with HR Services to arrange the Appeal and provide it with evidence. The Chair may be expected to attend the Hearing as a witness.

The Appeal Hearing cannot impose a more serious penalty than the original sanction.

Employees have the statutory right to be accompanied to the appeal hearing and the Appeal Chairman will be advised by HR during this meeting.

Employees will be informed in writing of the results of the appeal hearing within 10 working days of the hearing. There will be no further right of internal appeal.

Grievances

There is a separate procedure for employees who wish to raise a grievance about their employment.

If an employee raises a grievance about their employment that is related to a disciplinary case against them, it may be sensible to try to resolve the issue as part of the disciplinary proceedings.

If the related grievance is raised after the Disciplinary Hearing, then treatment of the grievance will be considered as appropriate, i.e., either as part of any appeal, or as a separate grievance.

Grievances that are not related to the disciplinary procedure will be considered separately and without delay using the Council's Grievance Policy and Procedure and will have no bearing on the disciplinary process.

Suspension or temporary redeployment

An employee can be suspended from work on normal contractual pay or temporarily redeployed while an investigation is conducted if the manager, following advice from HR, believes that:

- The investigation could be compromised, or
- The allegations could be construed as gross misconduct with the potential sanction of summary dismissal, or
- There is a serious risk to service users, other employees, council resources or property by the employee, or
- There is risk of harm to the employee; or
- The allegations refer to safeguarding issues, or

- There is intolerable risk of reputational damage to the Council by keeping the employee at work
- The employee is subject to criminal proceedings which may affect whether they can do their job

Suspension and temporary redeployment will only be used in exceptional circumstances and are not a form of disciplinary action or an indication that the allegations made are assumed to be true. In normal circumstances, suspension or temporary redeployment will not be unnecessarily protracted. Managers must meet the employee to explain the circumstances and conditions of their suspension or temporary redeployment as soon as possible. This information will then be sent to the employee in writing within 10 working days.

While suspended, the employee can only contact named employees of the council and must make themselves available for meetings on request. The employee cannot enter Council premises unless specifically instructed to do so.

The suspension will be reviewed by the Manager and HR at regular intervals to ensure that the reasons for suspension remain valid.

Allegations Related to Safeguarding

In cases where the alleged misconduct involves harm or risk of harm to a child or vulnerable adult, the manager must immediately seek advice from the council's Safeguarding Officer in accordance with the council's Safeguarding Policy. The relevant officers of the Council will meet to decide on the appropriate notification and involvement of other relevant bodies, e.g., the Police, professional or regulatory bodies etc.

Criminal Offences

If an employee is alleged to have committed a criminal offence whilst at work, the council may seek advice from the Police prior to any disciplinary action being taken. However, a police investigation should not unnecessarily prevent or delay the manager from commencing disciplinary proceedings. HR will consult with the Police before deciding with the manager on an appropriate course of action.

If the employee is charged with, or convicted of, a criminal offence outside of work this is not normally in itself reason for disciplinary action, however, they are obliged to notify their line manager in accordance with the Code of Conduct.

The manager and HR will consider what effect the charge or conviction and sentence has on the employee's suitability to do their job and their relationship with their employer, work colleagues and customers. Normal disciplinary investigation and meeting procedures must apply, and dismissal will only happen if there is a genuine belief that the subject matter of the criminal investigations means that the employee is no longer able to effectively carry out the duties of their role or brings the Council into disrepute.

Appendix 1

Levels of misconduct

The following examples of levels of misconduct and the disciplinary sanction most likely to be applied are for illustration purposes only. Each and every incidence of misconduct will be dealt with on its merits and reflect the particular circumstances of the case. It is possible for an incident to be regarded as minor in one service and more serious in another, where its impact is more far reaching. Examples of the acts that may constitute the different levels of misconduct include, but are not limited to:

General Misconduct – normally a verbal or written warning for:

- Failure to comply with sickness reporting procedures (but deliberate or repeated failure may attract a more serious sanction)
- Poor timekeeping or punctuality (but persistent poor time- keeping or punctuality may attract a more serious sanction)
- Use of inappropriate language or behaviour, including via email
- Refusal or failure to comply with minor operating or work procedures
- Smoking in a designated smoke free area

Serious Misconduct – normally a final written warning for:

- Refusal or deliberate failure to comply with a legitimate managerial instruction or Council policy or procedure
- Unauthorised disclosure of a computer password, unauthorised use of internal or external email facilities or unauthorised use of computer software, including changing security software
- Repeated unauthorised absence or lateness
- Negligence in the performance of duties, or in maintaining the security of any Council property or resources, including data
- Any act of attempted or actual harassment or discrimination of any kind, including discriminatory comments or behaviour
- Use of abusive language or behaviour
- Incapability through alcohol or being under the influence of drugs at work contrary to the Alcohol Management Guidance
- Any act of falsehood, e.g., knowingly or through neglect making any false, misleading, or inaccurate oral or written statement or entry in any record or document that is made, kept, or required for the purposes of the Council
- Misconduct in relation to official documents e.g., destroying or mutilating any record made, kept, or required for the purposes of the Council, or altering, erasing, or adding to any entry without legitimate reason.
- Refusal to engage with the Compliance and Data Protection Officer in connection with statutory requests

Gross Misconduct

Gross Misconduct is misconduct of such a serious nature that it fundamentally breaches the contractual relationship between the employer and employee, destroying the trust that is integral to the relationship. A finding of gross misconduct will normally result in dismissal without notice and without payment in lieu of notice. A dismissal for gross conduct will only take place after the normal investigation to establish the fact and appropriate procedures have been completed. Examples of

gross misconduct include:

- Theft, unauthorised use, removal or damage to the Council's, a service user's, clients, or fellow employee's property,
- The deliberate introduction of computer viruses
- Any incidence of fraud or falsification of any Council records
- Disorderly or indecent conduct, fighting or threatening serious physical or verbal abuse
- Deliberate or targeted bullying or unlawful discrimination or harassment
- Submission of false references/information or failure to disclose relevant information when requested in connection with an application for appointment with the council
- Inappropriate use of email or the internet e.g., viewing and/or downloading indecent images of children and/or adults; inciting or procuring an illegal act or action
- Failure by an employee to report actual or suspected physical or sexual abuse or other inappropriate behaviour of a child or other vulnerable person by another employee or person
- Mistreatment of children or vulnerable adults or other serious safeguarding issues
- Serious incapability through alcohol or being under the influence of drugs at work
- Serious breach of the Council's Equal Opportunities Policy
- Serious breach of the Council's Health and Safety Policy
- Bringing the council into serious disrepute in a professional or personal capacity
- Misuse of an official position for private advantage or personal gain
- Serious breach of Professional Codes of Practice
- Non-disclosure of criminal convictions or cautions received
- Failure or refusal to respond to statutory requests

Appendix 2

Sample of Agreed Outcome Procedure.

If, at the end of an investigation into a potential disciplinary issue, the employee accepts the allegations made against them then there is no need to proceed to a Disciplinary Hearing.

The facts of the allegation are not in dispute and the employee has accepted their fault. What needs to be determined therefore is the level of sanction to be applied.

Agreed outcomes are only appropriate where both parties are agreeable to the process and to the outcome.

If either the employee or their representative is unhappy with a proposal of an agreed outcome, then the normal disciplinary process must be followed.

Where there is agreement to an agreed outcome as being the acceptable way forward for both parties, the following principles should be followed:

Both parties must agree to proceed in this way. This decision is final and there should not be a later referral to a disciplinary hearing or appeal on this issue.

The relevant Assistant Director must be aware of and agree to the proposal for an agreed outcome before it is offered. They must satisfy themselves that agreeing an outcome does not impede future Disciplinary Hearings in similar cases.

Agreed outcomes can only be considered for cases where dismissal is not a likely outcome

A meeting should be held with both parties (i.e., employee and their representative and the Investigating Manager). At the meeting, all information relevant to the allegation(s) or complaint(s) must be available and both parties must have a full opportunity to discuss all the issues, in accordance with the normal principles of natural justice

The meeting can be adjourned and reconvened at any time if, for example, there is a need to obtain further information.

The employee will be required to sign a letter of acceptance within 7 calendar days; referred to as 'the cooling off' period. If the individual wishes to withdraw from the agreed outcome process the Investigating Officer will make the decision to recommend whether the case progresses to a full Disciplinary Hearing.

In the event that the employee does change their mind, then the normal disciplinary process will be followed.

Following the meeting and 'cooling off' period the Disciplining Officer will write to the employee to confirm the disciplinary sanction and get their written agreement to the outcome.

The disciplinary sanction issued, and accepted by the employee, will have the same status as those obtained via a hearing, except that there will be no possibility for an appeal.

All relevant documentation, including a record of the meeting, must be retained on the personal file in HR.