



DISCIPLINARY POLICY AND PROCEDURE

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Revision history

Revision Date	Summary of changes
15/11/16	Final Draft
09/02/2017	Employment Committee
February 2021	HOS Governance / Chair Employment Committee Minor process updates no policy changes made

Approvals

Name	Approved	Date
Leadership Team	Yes	9 November 2016
ELG	Yes	December 2016
Employment Committee /Full Council	Yes	February 2017
HOS Governance/ Chair Employment Committee	Minor process updates no policy changes made	Feb 2021

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 Brian.

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.

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.

Roles and responsibilities

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

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

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.

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.

Disciplinary procedure

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. However, managers must be mindful of the requirements of the Council's services and not hesitate to take action 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.

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 accusation and 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 investigate potential disciplinary matters without unreasonable delay to establish the facts. This may require the manager to hold an investigation meeting with the employee before deciding whether to proceed to a formal disciplinary hearing.

If a case is to proceed, the employee's manager will normally be responsible for conducting the disciplinary investigation however in cases where that is not possible (e.g. because of the nature of the allegations) another appropriate manager will investigate. In very serious or complex cases the council may appoint an external investigator.

The Head of Service will appoint an appropriate manager to conduct the investigation in consultation with HR. The manager investigating the case will be known as the investigator. The investigator will conclude whether there is a case to answer.

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 there is reason to believe that there has been a breach, the employee must be advised as soon as reasonably possible. If the breach merits investigation, then the employee must be notified as soon as reasonably possible.

This notification should contain enough information about the alleged misconduct and its possible consequences for the employee to help them to prepare to answers at an investigatory meeting.

An investigatory meeting is designed to collect evidence, to put the allegations to the employee, to allow the employee to provide an initial response to the allegations. Notes of the meeting will be taken, agreed by both parties and maybe submitted in evidence at any subsequent disciplinary hearing.

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 outcomes can only be considered where both the employee and the council are in agreement 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 the investigator recommends that there is a case to answer, and the allegation, if proven, is unlikely to lead to a sanction of dismissal, the employee's manager will conduct the disciplinary hearing, test the evidence and decide the outcome and sanction.

However, if the allegations are serious enough that might mean a potential dismissal then a Disciplinary Hearing must be held. In usual circumstances, the Hearing will be chaired by the employee's Head of Service.

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 Chairman 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.

Hold the disciplinary hearing with the employee

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. It is noted that the employee has a right to be represented at a Hearing and the council will seek the first mutually convenient date for a union representative to attend.

If the employee, or their representative is unable to attend the disciplinary hearing the manager or Head of Service should rearrange the hearing.

If the employee fails to attend the rearranged hearing the Chairman of the Hearing can make a decision on the evidence available and without the employee's input.

Allow the employee to be accompanied

Employees have a statutory right to be accompanied by a colleague or union representative to a formal investigation meeting and any subsequent disciplinary hearing.

The chosen companion can be a fellow worker or a trade union representative. The employee must advise in advance to the Investigator or Chairman that they will be accompanied, giving details of who that person is.

Where the employee has special needs, a relative or support worker may accompany them, subject to formal notification prior to the hearing.

Decide on the appropriate action

At the end of or as soon as possible after the disciplinary hearing the Chairman will decide whether the allegations are proven and whether any sanctions are to be applied and will inform the employee of this. This will be confirmed in writing to the employee, normally within 10 working days.

The Chairman will consider the appropriate outcome taking into account the outcome of similar cases within the Council, the employee's previous record and any mitigating circumstances.

Outcomes can be:

- Allegations not found on the balance of probabilities. No further action

Where the allegations have been proven on the balance of probabilities
No further action or 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 (with timescale), 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 within the timescale given will be to 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 Head of Service who has the delegated authority to do so.

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 (normally another Head of Service) and appeals against other disciplinary sanctions will be heard by the employee's Head of Service (or another nominated Head of Service previously uninvolved in the case).

Employees must set out in full the grounds of their appeal in writing to the Head of Service 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 Chairman may be expected to attend the Hearing as a witness.

The Appeal Hearing may not 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. However 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.

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.

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;
- 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

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. [Link to template letters](#)

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

Allegations of harm to vulnerable adults or children?

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 / Police involvement

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.

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, client's 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
- None disclosure of criminal convictions or cautions received

Acts of gross misconduct, including incidents of inappropriate behaviour towards children or vulnerable adults, will usually result in an employee's dismissal, even for a first offence.

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 be in agreement 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 Head of Service must be aware of and agree to the proposal for an agreed outcome. The Head of Service must satisfy him or herself that agreeing an outcome does not fetter future Disciplinary Hearings in similar cases.

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

An Agreed Outcome must not interfere with, or compromise 'due processes, e.g. audit

A meeting should be held at which both parties (i.e. employee and their representative and the Investigating Manager) will be present, together with a HR Representative. The line manager, and Head of Service, may or may not be present but must be aware of the fact that the meeting is taking place.

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 or not 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.

Appendix 3

