

Disciplinary Procedure

JSCC Approved –

NSP Approved



INTRODUCTION AND POLICY ISSUES

1.1 Purpose

This procedure supports managers in undertaking their responsibilities for encouraging employees to achieve and maintain acceptable standards of conduct and behaviour in relation to their employment. It provides them with an effective process for dealing with potential or actual misconduct. Managers considering taking action under this procedure should contact Human Resources in the first instance.

NOTE: This document does not set out examples of what may be regarded as misconduct, or gross misconduct as such guidance is provided within the separate Disciplinary Rules and Officer Code of Conduct

1.2 Scope

It applies to all employees within the Council, **excluding the posts of Head of Paid Service, Monitoring Officer and Section 151 Officer**. It should not be used for issues relating to capability, probationary periods issues, or attendance problems (which are covered by separate provisions). It may be applicable in the case of bullying and harassment.

1.3 Key Principles

- Minor instances of unsatisfactory conduct and/or behaviour are usually best dealt with initially outside this procedure. It can be dealt with informally by the manager bringing the matter to the attention of the employee and discussing how the necessary improvements can be achieved.
- No formal disciplinary action will be taken against any employee until the case has been fully investigated.
- A trade union representative's or work colleague's role in supporting employees during the disciplinary process is recognised and encouraged.
- No employee will be dismissed for a first breach of discipline, except in the case of gross misconduct when the response will normally be dismissal without notice or payment in lieu of notice.
- Grievances with regard to Managers, received by employees being investigated, will not be heard until after the disciplinary process is completed.
- In exceptional circumstances it may not be possible to comply with the disciplinary procedure (for example, where there is a threat of violence). Further advice must be sought from Human Resources in any such potential cases.

1.4 Disciplinary Procedure and Absence

Employees subject to the disciplinary procedure, who are absent from work due to sickness, may be referred to occupational health for advice on assisting their return to work and/or their participation in the investigation and/or disciplinary process.

Whilst an employee may feel stressed and anxious under such circumstances issues will not be put on hold indefinitely awaiting an employee's return to work.

If sickness or other absence prevents an employee attending an investigation meeting or disciplinary hearing it may be postponed and re-arranged within 5 days or as soon as is practicable.

Employees will be advised at that time that if they fail to attend the re-arranged meeting or hearing, then their case may be considered in their absence based on the written submissions.

THE DISCIPLINARY PROCEDURE

2. INVESTIGATION

In summary, the key responsibilities of the investigating manager at this stage are to:-

- identify the potential seriousness of the matter
- determine any need to suspend the employee (see 2.2)
- investigate and gather all relevant information, which may include an investigation interview
- review the need for further investigation; and
- upon completion of a full and proper investigation, determine how to proceed (see 2.3)

It is important that investigation information is appropriately documented.**2.1 Investigation**

Where potential misconduct has been identified, that is serious enough to begin enquiries under this procedure, an investigating officer, , will need to gather sufficient evidence to be able to reach a decision on whether or not to proceed with a disciplinary hearing. In exceptional cases it may be necessary to undertake covert surveillance of an employee as part of an investigation. Under statutory provisions, covert surveillance may be conducted though this will require the approval of designated senior officers in accordance with the Council's policy.

If there is a need to question the employee(s) concerned at any stage during the investigation, this should be done by holding an investigation interview, at which the investigating officer should outline a description of the potential misconduct and explore further investigatory information with the employee. This provides the investigating officer with information to decide whether or not there is a disciplinary case to answer, and possibly avoid the need for a disciplinary hearing.

The employee, however, must be given at least 3 working days notice of the time and date of the investigation interview, the allegations to be discussed and their right to be accompanied (by a trade union representative or work colleague), which should be confirmed in writing. If the employee's trade union representative or work colleague is not available on the date given, a reasonable alternative date should be sought within a period of five days of the original date.

It may well be the case that during the investigation, other matters/allegations come to light. If this happens prior to the investigation meeting, then these matters should be put to

the employee at an investigation meeting after being given prior notice of any amended or additional allegations.

2.2 Precautionary Suspension

Suspension is precautionary action and does not imply guilt or any form of disciplinary action against the employee:

- It can be carried out at any stage in the investigation by the manager
- There is no requirement to give advanced notice
- Full pay continues during this period
- In all cases suspension must be confirmed in writing
- Where possible Human Resources advice should be sought before taking action
- Employees facing suspension can be accompanied by their trade union representative or work colleague (if this causes undue delay then it can be carried out without representation)
- The need for the employee to continue to remain on suspension must be reviewed throughout the investigation.

Examples where suspension may be appropriate include:

- Where the matter under investigation is one of potential gross misconduct
- To safeguard the personal welfare of employees, clients or members of the public
- To allow an investigation to take place which could not be undertaken if the employee remains in the workplace.

An employee who is suspended should not discuss the case with witnesses or work colleagues without permission to do so nor should they enter council premises or systems without prior approval. The employee will be afforded all reasonable access to materials pertinent to the investigation where appropriate. While a suspended employee is not required to attend work, other contractual obligations remain in place and a suspended employee should remain available to assist in the disciplinary investigation.

Contravention of this instruction without reasonable excuse will, in itself, be a potential disciplinary matter.

2.3 How to Proceed

When the evidence has been gathered the investigating officer needs to consider how to proceed. If there is:

- a) No further action – if it is decided that the allegations do not justify action or there is no evidence to substantiate the allegations then the employee will be informed and details of the investigation and outcome will be recorded
- b) Informal management action - minor misconduct has occurred but the matter should be dealt with by informal measure this should be undertaken as soon as possible and the manager should record the issue and improvement required.
- c) a disciplinary case to answer and it is serious enough, if substantiated, to warrant disciplinary action, then the following procedure must be initiated.

NOTE : If further information relevant to the case comes to light following completion of the investigation, advice should be sought immediately from Human Resources to agree how to proceed.

3. THE DISCIPLINARY HEARING

3.1 The Hearing Procedure

The disciplinary hearing should be chaired by a manager with the appropriate level of authority to take disciplinary action (see table 3.3).

3.1.2 Arranging the Hearing

The employee will be given at least 5 working days' written notice by the investigating officer of the arrangements for a disciplinary hearing. Guidance **MUST** be sought from Human Resources

It must include the following:

- sufficient detail of the allegation(s)
- a copy of this procedure and the disciplinary rules
- any documents to be produced by management as evidence at the hearing
- the right to be represented by a trade union representative or work colleague, pointing out the employee's responsibility to make the arrangements. If the representative/work colleague will not be available and an alternative time is proposed, the hearing will be rearranged providing the proposal is reasonable and no later than 5 working days from the original date
- a statement explaining that the employee needs to provide to the hearing manager, any documents which they wish to be presented, together with the names of any witnesses to be called, as far in advance as reasonably possible.

Templates of letters can be obtained from Human Resources

3.1.2 Re arranging Hearings

After the hearing date has been set, should the employee or their representative/work colleague be unable to reasonably attend due to unforeseen circumstances they should inform the Investigating Officer as soon as possible so that another hearing can be arranged. The new hearing date should be within a period of 5 working days of the original date, where possible.

A decision may be taken in the employee's absence if they fail to attend the re arranged hearing and in confirming the revised arrangements this should be made clear to the employee.

There is only an obligation to rearrange once. However, advice can be sought from Human Resources about whether this is reasonable in the circumstances.

3.1.3 The Conduct of the Hearing

The meeting should be conducted in a formal and polite manner by all parties concerned. Any arguments or personal remarks should be avoided and any abusive or aggressive language or behaviour on the part of any parties will not be tolerated. If an employee becomes upset or distressed during the process, the hearing manager may offer a short adjournment.

The hearing should take place as follows:

- introduction by the hearing manager
- presentation of the facts regarding the alleged misconduct by the investigating officer or nominated officer, calling witnesses if necessary
- questioning of the investigating officer and witnesses by the employee or their representative and as appropriate by the hearing manager and/or their adviser
- response to the allegation by the employee and/or their representative, calling witnesses if necessary
- questioning of the employee and/or their representative and witnesses by the investigating officer and as appropriate by the hearing manager and/or their adviser
- final questioning by those conducting the hearing followed by the opportunity for the investigating officer and the employee or their representative (in this order) to summarise in the form of a final statement.

All parties will then withdraw, with the exception of the Human Resources Adviser, to allow the hearing manager to come to a decision. Before reaching a decision, the hearing manager may need to re-examine witnesses and/or gather further information. This must be done by re-calling both parties and re-examine the witnesses in their presence. However, if the hearing manager considers appropriate further investigation of evidence or witnesses are not available at the hearing, an adjournment may be called at this stage.

The hearing manager will reach a decision, based on the information available and on the balance of probabilities. Any sanction imposed will also take into account any previous disciplinary warnings on file, the sanction imposed on similar cases within the organisation and any mitigating factors presented.

3.2 The Decision

The employee will be informed of the decision verbally and of their right of appeal (where appropriate). This will be confirmed in writing no later than 5 working days after the hearing.

The decision options available are as follows:

- a) **No Action.** In cases where it is decided that there has been no misconduct or where there is insufficient evidence that misconduct has occurred, or the employee has offered enough mitigation to render any kind of disciplinary sanction inappropriate or unnecessary
- b) **Improvement Note.** In cases where misconduct has occurred but it is not felt serious enough to be dealt with by a formal warning. This may include a warning

that disciplinary action may be considered if there is no satisfactory improvement. The hearing manager may issue an improvement note which will include:

Details of the conduct and/or behaviour issue

What improvement is required

Timescales for improvement (maximum of 12 months)

A review date

Any additional support that will be provided by the council

c) Formal Action:

Written Warning: In cases where the misconduct is considered to be serious enough to warrant a written warning, the employee must be notified of the reason for the warning and the improvement required, the timescale for the warning and the right to appeal. It will warn that further disciplinary action will be considered if there is no satisfactory improvement. Details of the written warning will be entered on the employee's personal record. It will be disregarded after 12-24 months (depending on the sanction/**confirmed in writing to the employee**) from the conclusion of the disciplinary hearing, subject to no further misconduct during this period.

Final Written Warning: In cases where the offence is a substantial breach of conduct which warrants only one warning before dismissal is considered, or where further misconduct occurs within 12-24 months (depending on the sanction/**confirmed in writing to the employee**) of the issue of a written warning, a final written warning may be issued. This will advise the employee of the reason for the warning, the improvement required, the timescale for the warning and the right to appeal. It will warn that dismissal will result if there is a further breach of discipline within the period of the warning. Details of the final written warning will be entered on the employee's personal record. It will be disregarded after 12-24 months (depending on the sanction/**confirmed in writing**) from the date of the conclusion of the disciplinary hearing, subject to no further misconduct during this period.

Dismissal: In cases where the offence constitutes gross misconduct or where the employee commits a further act of misconduct following a final written warning, which had been issued within the previous 12-24 months (depending on the sanction/**confirmed in writing to the employee**), then dismissal may result. Dismissal will be without notice in cases of gross misconduct and the date of the hearing managers decision will be the effective date of dismissal, Dismissalwith due notice in cases of further misconduct whilst in receipt of a final written warning and the effective date of termination will be the day notice expires The employee will be provided with written reasons for dismissal, the date on which employment will terminate and informed of the right of appeal.

3.3 Limits of Authority to Take Disciplinary Action

Action	Minimum Level of Authority
Written Warning	Manager (misconduct)

Final Written Warning	Manager (misconduct/gross misconduct)
Dismissal	Manager (gross misconduct)

4. Appeals

4.1 Right of Appeal and General Requirements

Appeals should be put in writing within 5 working days of receiving notification of the disciplinary decision. Appeals should be sent to:

- The Human Resources Department

The appeal letter should contain the following:

- disciplinary action being appealed against
- clear reason for the appeal e.g unfairness of judgement by the officer, severity of sanction, or disregard of key information
- the name and address of their representative (where applicable).

Following the appeal hearing the employee should be informed of the decision, in writing, and that this is the final stage of the procedure.

The outcome of the appeal may be that:

The decision in the original disciplinary hearing is upheld and the sanction issued remains in place;

The decision in the original hearing is dismissed and the sanction issued is removed;

The original sanction is altered, and the sanction is reduced but not removed; or

The original sanction is altered and the sanction is increased.

4.2 Levels of Authority for Hearing Appeals

Appeal Against	Heard by
First and Final Written Warning	Manager not previously involved
Dismissal	Director/Chief Executive
Dismissal of Director (not a statutory officer)	A Panel of Members

5. Employment Tribunal

Following the Appeal Stage the employee can make a claim to an Employment Tribunal

6. Monitoring Arrangements

Responsibility for the implementation, monitoring and development of this procedure lies with the People & OD Manager. Day to day operation of the procedure is the responsibility of nominated officers who will ensure that this procedure is adhered to.

Policy Statement

West Lindsey District Council has a commitment to equal opportunities.

It seeks to ensure that no potential or current employee receives less favourable treatment than another on the grounds of age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

West Lindsey District

تامول عمل ا نم دي زم قبا ص ع 676676 72410

За повече информация пръстен 01427 676676

Lisainformatsiooni ring 01427 676676

अधिक जानकारी के लिए रगि 01427 676676

További információ gyűrű 01427 676676

Lai iegūtu vairāk informācijas gredzenu 01427 676676

Norėdami gauti daugiau informacijos žied 01427 676676

Aby uzyskać więcej informacji na ring 01427 676676

Pentru mai multe informații inel 01427 676676

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If you would like a copy of this in large, clear print, audio, Braille or in another language, please telephone

01427 676676

Guildhall, Marshall's Yard
Gainsborough, Lincolnshire DN21 2NA
Tel: 01427 676676 Fax: 01427 675170
DX 27214 Gainsborough

www.west-lindsey.gov.uk

