



Disciplinary Procedure



DISCIPLINARY PROCEDURE

1.1 Introduction

West Lindsey District Council (WLDC) expects employees to maintain high standards of professional behaviour at all times. Should this not happen, this Disciplinary procedure aims to achieve, a fair, consistent and systematic approach to maintaining standards of behaviour, wherever possible encouraging improvement in conduct. Where managers are considering acting under this procedure, they should in the first instance contact Human Resources.

NOTE: This document does not set out specific examples of misconduct, or gross misconduct, these are detailed in separate Disciplinary Rules. This document should also be read in conjunction with the Officer Code of Conduct

1.2 Scope

This procedure applies to all employees of WLDC, **excluding the posts of Head of Paid Service, Monitoring Officer and Section 151 Officer** who are covered by other procedures. It does not apply to contractors or consultants external to the Council.

This procedure deals solely with misconduct or gross misconduct and should not be used to deal with matters of capability or attendance or be applied to employees in their probationary period. Separate provisions exist for each of these situations.

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 case.

1.3 Key Principles

- WLDC is committed to ensuring that this procedure complies with all relevant legislation and guidance, including any relevant ACAS Code of Practice.
- WLDC recognises that a disciplinary procedure can be stressful and upsetting. Everyone involved in the process is entitled to be treated calmly and with respect.
- We will make reasonable adjustments to the procedure where a disability impacts an employee's ability to participate fully in this procedure, equally additional language support will be arranged if necessary.
- Minor instances of unsatisfactory conduct and/or behaviour are usually best dealt, informally by the manager by bringing the matter to the attention of the employee
- No formal disciplinary action will be taken against any employee until the case has been fully investigated.
- Support for an employee from a trade union representative or work colleague 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.

1.4 Initial fact-finding investigation of the matter

If an informal discussion between the line manager and the employee has been unsuccessful or the nature of alleged misconduct mean that an informal approach may not appropriate, the line manager and/or other more senior managers, in consultation with the HR team will conduct an initial fact-finding investigation to determine whether a formal investigation under the disciplinary procedure is necessary.

1.5 Disciplinary action against Trade Union representatives

If an employee is an accredited representative of a recognised trade union, WLDC will endeavour to take no action under this procedure (except for suspension in a case of alleged gross misconduct) until the Manager / HR team have had an opportunity (with the employees' agreement) to discuss the matter with a full-time official of the union.

1.6 Remote proceedings

Where it is not possible to hold a face-to-face meeting under any part of this procedure, WLDC will explore the possibility of conducting the process remotely using meeting software.

1.7 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.

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

The procedure will not be put on hold indefinitely awaiting an employee's full fitness to participate, and if necessary the investigations may continue. Where the case is heard in the absence of the employee they will be given the opportunity to submit a written response.

1.8 Grievances raised during the Disciplinary Procedure

If an employee raises a grievance that relates to ongoing disciplinary proceedings a manager independent to the disciplinary will review the grievance with support from Human Resources. It is then their decision as to whether the grievance is dealt with as part of the disciplinary process e.g. at disciplinary hearing or appeal stage, or separately using the grievance policy.

If an employee raises a grievance during disciplinary proceedings that is unrelated to those proceedings, the disciplinary procedure and grievance procedure will normally run independently in parallel.

1.9 Records of meetings during the Disciplinary Procedure

A written record of all meetings conducted under this procedure will be made, either by the person holding the meeting or by an additional notetaker. Employees or their representatives, are not normally permitted to record any meeting electronically.

In certain circumstances, we may arrange for a meeting to be recorded electronically, for example where it is a reasonable adjustment for an employee with a disability. Where we intend to record meetings electronically, we will comply with data protection obligations and obtain prior consent from all attendees.

1.10 Suspension

Table 1 Limits of authority for suspension

Action	Minimum Level of Authority
Suspension	Manager / Assistant Director / Director

In some cases, it may be appropriate to suspend or restrict duties of an employee from work or duties for a temporary period while the disciplinary matter is dealt with. This is a **precautionary action** and does not imply guilt and is it not in itself any form of disciplinary action against the employee. Ideally Human Resources advice should be sought before taking such action and if not, Human Resources must be informed of any suspension at the earliest opportunity.

Suspension will normally occur in cases of potential gross misconduct and/or where further investigation is necessary and the employee remaining in the workplace may affect the investigation. Alternatives to suspension such as moving the employee to a different work area will be considered before making any final decision.

Suspension can be carried out at any stage in the investigation and there is no requirement to give advanced notice. 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). Any suspension will be confirmed to the employee in writing and the employee will receive full pay throughout the suspension period.

The need for the employee to continue to remain suspended must be kept as short as possible and reviewed throughout the investigation, with the employee supported and kept up to date.

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 be a potential disciplinary matter.

2. INVESTIGATION

2.1 Investigation process

Where it is considered that an employee's conduct cannot be resolved informally and may justify disciplinary action, after an initial investigation by the employee's line manager and/or other more senior managers, in consultation with the HR team, an Investigating Officer who is independent of the service area will be appointed to carry out a formal investigation without unreasonable delay. They will:

- Plan the investigation to ensure the matter is dealt with promptly and thoroughly.
- Ensure sufficient time is set aside for a thorough investigation.
- Keep the HR team up to date with progress of the investigation.
- Investigate, collect evidence, including if necessary, interviewing the employee concerned and any witnesses as promptly as possible.
- Keep evidence securely and confidentially.
- Maintain confidentiality, this includes any discussions with employees and witnesses.
- Upon completion of a full and proper documented investigation, make a recommendation on next steps.

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. The employee, 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 5 days of the original date.

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.

Should other matters/allegations come to light during the investigation but prior to any initial investigation meeting with the employee concerned. Then these matters should be put to the employee at the investigation with prior notice given of any amended or additional allegations.

2.2 Outcome from the Investigation

The Investigating Officer will not make recommendations on any disciplinary sanction or pre-judge what the outcome of a disciplinary hearing might be. Instead the Investigating Officer as part of their documented investigation will make a recommendation on next steps. This will be one of the following:

- a) No further action
- b) Informal action - the matter should be dealt with informally as soon as possible
- c) Formal action - the findings of the investigation indicate that the allegations warrant a disciplinary hearing

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 2).

Table 2 Limits of authority to take disciplinary action

Action	Minimum Level of Authority
First Written Warning	Manager (misconduct)
Final Written Warning	Manager (misconduct/gross misconduct)
Dismissal	Manager / Assistant Director / Director (gross misconduct)

3.2 Arranging the Hearing

The employee will be given at least 5 working days' written notice 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

3.3 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 hearing manager 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. There is only an obligation to rearrange once. However, each case will be considered on an individual basis and advice should be sought from Human Resources.

A decision may be taken in the employee's absence if they fail to attend the re arranged hearing. This will be made clear to the employee when any revised arrangements are made.

3.4 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 Representative who will advise on process, 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 consider any previous disciplinary warnings on file, the sanction imposed on similar cases within the organisation and any mitigating factors presented.

3.5 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 there is insufficient evidence that misconduct has occurred, or there are sufficient mitigating circumstances.

b) **Improvement Note.** In cases where it is decided that misconduct has occurred but it is not felt

serious enough to be dealt with by a formal warning. The improvement note will include:

- Details of the 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

The Improvement note may indicate that disciplinary action may be considered if there is no satisfactory improvement

c) **Formal Action:**

First Written Warning: In cases where the misconduct is considered to be serious enough to warrant a written warning, the employee may be issued a written warning. The employee will be notified of the reason for the warning, 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 6 months (depending on the sanction) from the date of the disciplinary hearing subject to no further misconduct during this period.

Final Written Warning: In cases where there is a substantial breach of conduct which warrants only one warning before dismissal is considered, or where further misconduct has occurred whilst a written warning is in place, the employee may be issued a Final written warning. This employee will be notified 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 months (depending on the sanction) from the date 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 whilst a final written warning is in place, then dismissal may result.

Dismissal will be without notice in cases of gross misconduct. The date of the hearing managers decision will be the effective date of dismissal.

Dismissal will be with contractual 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 reasons for dismissal, the date on which employment will terminate and the right of appeal.

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

Table 3 Levels of authority for Hearing Appeals

Appeal against	Minimum Level of Authority
First Written Warning	Manager not previously involved
Final Written Warning	Manager not previously involved
Dismissal	Manager (not previously involved) /Assistant Director (Independent of the service area) / Director (Independent of the service area) /Chief Executive
Dismissal of Director (not a statutory officer)	A Panel of Members

5. 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.

If you would like a copy of this document in large print, audio, Braille or in another language:

Please telephone 01427 676676

or email customer.services@west-lindsey.gov.uk



West Lindsey District Council
Guildhall, Marshall's Yard
Gainsborough
Lincolnshire, DN21 2NA