

Disciplinary Policy

Disciplinary Policy	1
1 The Purpose of this Policy	2
2 Responsibilities	2
3 Eligibility	2
4 The Disciplinary Procedure	2
5 General Principles	3
6 Fast-track Formal Process	5
7 Rights of Representation/Accompaniment	6
8 Suspension	6
9 Investigations.....	7
10 Disciplinary Rules	9
11 The Conduct of a Disciplinary Hearing	10
12 Appeals.....	13
13 Re-hearings	14
14 Reviews	14
15 Dismissal	14
16 Review of policy.....	15

1 The Purpose of this Policy

- 1.1 The purpose of this policy is to make sure that employees and managers understand how the Council will deal with complaints about alleged breaches of legal or contractual rights.
- 1.2 This policy aims to assist and encourage staff to achieve and maintain the required standards of conduct and performance as well as providing prompt, consistent and fair treatment for all. To ensure these objectives are met, it is a mandatory requirement for managers to contact HR prior to commencing formal disciplinary action in all cases. A member of the HR/Legal team will be nominated as providing support.

2 Responsibilities

2.1 Responsibility of Assistant Directors/Directors/Managers

- To understand and comply with the policy and to ensure the compliance of others.
- To respond promptly to any issues raised under this policy.

2.2 Responsibility of HR

- To provide support and guidance on the application of this policy.
- To ensure timescales are met and escalate where required.
- To regularly review and update this policy as required.

2.3 Responsibility of the Trade Unions

- To respond promptly to any issues raised under this policy.

3. Eligibility

This procedure applies to all employees.

This policy does not apply to cases relating to lack of capability or competence, which will be dealt with under separate procedures. Performance issues will be dealt with through this process when an employee fails to undertake work to the required standard and the investigation provides evidence that the employee has the experience, skills, knowledge and ability to meet performance requirements.

4. The Disciplinary Procedure

- 4.1 It is important that all employees know what standards of conduct and performance are expected of them. It is the responsibility of all to be aware of, and adhere to, the Council's Code of Conduct.
- 4.2 This policy has not been designed as a means of imposing sanctions upon employees but rather as a way of helping and encouraging improvement amongst those employees whose conduct or behaviour is unsatisfactory.

5. General Principles

- 5.1 No formal disciplinary action will be taken against a Trade Union representative until the circumstances of the case have been discussed with a full time official of the union.
- 5.2 At the start of the procedure, the employee will be advised of the specific nature of the complaint against them and will be given the opportunity to state their case before any decision is made to proceed to a formal disciplinary hearing. Managers should be aware that not all complaints have to result in a formal process and where an employee states their case and the manager believes that dealing with the complaint informally is appropriate an informal route should be taken. In all instances where a formal hearing could result, a full and fair investigation of the facts and circumstances surrounding the case will take place prior to any formal action being taken.
- 5.3 Disciplinary hearing will not be recorded by HR nor will any other form of recording be allowed by other parties, however non-verbatim notes will be made during these meetings / hearings.
- 5.4 It is recognised that the prospect of disciplinary action against an employee can be a distressing experience. Investigations should be commenced without undue delay and concluded within a maximum of 4 weeks except in unavoidable circumstances. Employees must be advised promptly if a delay is likely.
- 5.5 It is the Council's practice to try to agree a mutually convenient date with the employee and their companion, for the disciplinary hearing. This is to ensure that hearings do not have to be delayed or postponed at the last minute. Where the chosen companion cannot attend on the date proposed, the employee will be offered an alternative time and date as long as it is reasonable and is no more than ten working days after the new date proposed by the Council. If the employee and/or trade union representative or work colleague fail, without reasonable excuse, to appear at the reconvened hearing, the proceedings may, as a last resort, be conducted without them.
- 5.6 Circumstances may arise when the ill health of an employee prevents the disciplinary procedure from being followed because the employee is too ill to participate in the investigation, adequately prepare for a hearing or attend the hearing itself. Where this is the case, the Council will act consistently with the following principles:

- A. The ill health of an employee will not be a ground for abandoning any ongoing disciplinary procedures.
- B. Where the absence is likely to be short (i.e less than 1 month), the Council will usually wait until the employee recovers and is able to take a full part in the process.
- C. When the absence is ongoing and it appears to the Council that the employee is likely to remain off sick for an extended period, the organisation may require the employee to cooperate with a medical expert in determining whether or not he/she is sufficiently fit to take part in the disciplinary process.
- D. Where it appears that the employee is not fit to take a full part in the standard disciplinary procedure, the Council will consider taking any of the measures set out below to enable the employee to participate effectively.

5.7 The organisation may, with the agreement of the employee, adjust the standard disciplinary procedure by taking any or all of the measures set out below with a view to ensuring the effective participation of the employee in the disciplinary process:

- **Venue.** The organisation will consider holding the disciplinary hearing at a venue other than the organisation's premises, either to reduce the stress caused to the employee by attending the hearing or to accommodate any physical needs that the employee may have.
- **Written representations.** Where the employee may have difficulty in explaining his/her case, consideration will be given to allowing the employee to rely on written representations, which may be prepared by a representative on the employee's behalf.
- **Documentation.** The organisation will take particular care to ensure that the employee receives all documentation relating to the disciplinary process sufficiently time to allow him/her to prepare fully, taking into account any effect that the employee's health may have on his/her ability to analyse the information and prepare a response.
- **Timings.** While being committed to the principle that matters should be dealt with promptly, the organisation may allow extra time for any stage of the disciplinary process to ensure that the employee can participate effectively. Particular attention will be given to the duration of any disciplinary hearing and its impact on the employee and the need to take appropriate breaks.

5.8 There may be exceptional circumstances when the employee will not be able to attend a disciplinary hearing, whatever measures are taken.

In such circumstances, the organisation reserves the right to proceed with a disciplinary hearing in the employee's absence, although full consideration will be given as to whether or not this is necessary in the circumstances.

Where this is the case, the employee and his/her representative will be informed of the time and location of the hearing and will remain free to attend. The representative will be free to attend, even if the employee is not present.

The representative will be able to present any written representations but will not be able to answer questions on behalf of the employee.

The outcome of the hearing will be communicated in writing to the employee, paying particular attention to the need to explain the details of any factual findings made and the basis of the decision reached.

6. Fast-track Formal Process

6.1 In the case of minor misdemeanours, an alternative, 'fast-track' disciplinary process may be suggested to an employee. This will avoid the necessity for an investigation and/or a formal hearing i.e. where there is an admission or undisputed factual evidence has been obtained.

6.2 Note that this procedure can only be offered where:

- The employee is prepared to admit to the allegations.
- The resulting sanction would be no more than 'stage one' level verbal warning
- The employee, their trade union representative or work colleague confirms the agreement of the employee and that the agreement has been reached without any coercion.
- **After reviewing the investigatory report the presiding officer believes that it is suitable to offer this sanction as an alternative to a formal hearing.**

6.3 In all other cases, the full formal disciplinary procedure with a full investigation must be adopted.

6.4 To undertake this 'fast-track process' the following **must** apply:

- HR must be contacted prior to speaking with the employee to provide guidance and support during the meeting.
- A formal meeting must be held with the employee and their trade union representative and/or work colleague and they be given a choice of undergoing a formal disciplinary with a full investigation or accepting the sanction immediately without investigation.
- The employee must be given an opportunity to adjourn and consider their options. **The employee may be entitled to an adjournment period of 24 hours.**
- The employee must be notified that as they have admitted the allegations and accepted an oral warning there is no right of appeal.

6.5 The 'fast track' process can be used by:

- A presiding officer
- An employee manager as long as that line manager is of at least a Team Leader grade.

In all cases, HR must be contacted for guidance regarding using this process prior to any oral warning being issued.

7. Rights of Representation/Accompaniment

- 7.1 At all stages of the formal disciplinary process the employee will have the right to be represented by an representative of a Council recognised Trade Union. Alternatively, staff may be accompanied by a work colleague.
- 7.2 If applicable, The Council will allow reasonable time off for the accompanying person, to enable them to become familiar with the case and confer with their co-worker in addition to attending the hearing.
- 7.3 At disciplinary hearings there may be no more than one locally recognised trade union representative present, except in exceptional and agreed circumstances. Only one representative may present the case. The representative/companion may address the hearing, ask questions and confer with the worker but not answer questions on their behalf.

8. Suspension

- 8.1 Suspension is not a form of disciplinary action, but may be applied where gross misconduct is alleged, and/or it is considered that the presence of the individual at work would inhibit a detailed investigation of the incident, or in cases where the individual is considered to be a risk to staff or the public, or the individual is at risk from staff or the public, and/or there is reason to believe that property is at risk.
- 8.2 Wherever possible, alternatives to suspension such as temporary redeployment/ relocation or working from home should be carefully considered prior to initiating suspension.
- 8.3 Decisions to suspend must be referred to HR in all instances prior to the action being taken and can only be instigated by a Director or delegated to the City Solicitor or the HR Manager. The reason for suspension will be communicated to the employee at the time of suspension. This will be confirmed in writing within three working days.
- 8.4 Employees under suspension must not enter Council premises, unless given permission by the Investigating /Presiding Officer.
- 8.5 In the case of suspension of a Trade Union representatives, the full time officer should be notified at the earliest opportunity.
- 8.6 The initial period of the suspension should be a maximum of two weeks. This must be kept under constant review and the employee advised of progress and any other relevant information at intervals not exceeding two weeks.
- 8.7 During the period of suspension, the employee will receive the pay they would have received had they not been suspended. Line managers must ensure that any work correspondence, including payslips are provided to the employee, whilst suspended (this can be via email or post) . Staff under suspension must

be available to return to work at short notice. Periods of annual leave already booked will be treated as normal. Sickness should be reported according to normal procedures.

9. Investigations

- 9.1 The employee will be provided with a letter, as soon as the alleged breach of disciplinary rules comes to light, and wherever possible, during a face-to-face meeting, specifying details of the alleged incident and confirming who will be undertaking both roles of Presiding and Investigating Officer. Potential levels of sanction applicable should not be conveyed to individuals at this stage to avoid prejudging the outcome of the investigation.
- 9.2 The investigation should commence as soon as possible in order to ensure, wherever possible, that the facts are documented whilst they can be clearly recalled by the employee concerned and any witnesses involved. In most cases, there will be little or no delay between the alleged incident and the start of the investigation, although it is recognised that, in certain cases, the alleged breach may only come to light some time later, e.g. following an Internal Audit investigation.
- 9.3 Any investigation should reflect the facts of the case and be considered adequate in light of the circumstances. For example, where an employee has admitted a breach an investigation would be deemed sufficient if it consisted of a:
- letter to the employee outlining the allegations;
 - signed statement or email from the employee admitting the breach.

9.4 Presiding Officer

A Presiding Officer(s) must be appointed at the outset, and will be selected following advice from HR. They must be more senior than the employee under investigation. In some circumstances (cases involving a chief officer) there may be a need to have a panel of presiding officers which may include council members.

- 9.5 Their role is to determine whether the case is serious enough to proceed to a disciplinary hearing following a review of the report compiled by the Investigating Officer. They will set the parameters and scope of the investigation and provide guidance to the Investigating Officer.

9.6 Investigating Officer

The investigation itself should be undertaken by a member of HR, in cases where this is not possible, for example where there is a conflict of interest, an Investigating Officer with the necessary skills and training will be selected and appointed following discussions between HR and the Presiding Officer. In some circumstances there may be a need to appoint an independent investigating officer from outside the authority.

- 9.7 The Investigating Officer may call on other individuals to provide technical expertise as required.
- 9.8 The Investigating Officer will then present the report stating the facts and findings of the case, to the Presiding Officer who will determine whether a formal disciplinary hearing should be arranged.

9.9 Witness Statements

Any witness to the alleged misconduct will be asked to provide a written statement. The employee under investigation will have the opportunity to challenge witness statements and to question any witnesses that attend the hearing.

- 9.10 Witness statements will be disclosed to the employee. In exceptional circumstances, they may be withheld, provided the overall fairness of the procedure is not compromised. If statements are withheld, reasons will be given.
- 9.11 Witnesses or complainants will be entitled to a copy of their statement, however they will not be entitled to see a copy of any other aspects of the investigatory report.

9.13 Challenging Witness Statements

In considering the evidence provided by witness statements, the employee should be allowed to challenge the evidence, and produce his/her own version of events.

- 9.14 Where there are conflicting statements the Presiding Officer must decide on the balance of probability which version to believe. They should bear in mind that an unsigned witness statement is less valuable than one which has been signed.

9.15 Criminal Charges

An employee should not be dismissed or otherwise disciplined just because he or she has been investigated for, charged with, or convicted of a criminal offence. The question to be asked in such cases is whether the employee's conduct warrants action because of the implications for his or her employment.

- 9.17 Where criminal charges are pending, if the risk of employing someone who is alleged to have committed an offence is unacceptable, then it may be necessary for the employer to suspend the employee during the investigation.

9.18 Disciplinary Investigations where the employee has been found guilty with a Criminal Offence

The following guidance should be followed in relation to employees who have been found guilty with a criminal offence:

- The Council will investigate the facts as far as possible, come to a view about them and consider whether the conduct is sufficiently serious to warrant instituting the disciplinary procedure.
- If the investigation does not produce sufficient information to warrant disciplinary proceedings to be taken, the Council may delay until the criminal proceedings are finished.
- Where conduct requires prompt attention, the Council need not await the outcome of the prosecution before taking fair and reasonable action.
- If the police are called in they should not be asked to conduct any investigation on behalf of the Council, nor should they be present at any disciplinary hearing or interview. The Council may ask for access to any statements or other evidence made available by the police.

9.19 Action by the Council following Conviction

The Council may take disciplinary action against an employee who is convicted of a criminal offence, even if no action was considered necessary prior to conviction.

- 9.20 Where an employee charged with, or convicted of, a criminal offence refuses to co-operate with the Council's disciplinary investigations and proceedings, the Council should not be deterred from taking action. The employee should be advised in writing that unless further information is provided, a disciplinary decision will be taken on the basis of the information available and it could result in dismissal.
- 9.21 A disciplinary hearing can be held even though the employee is in prison, but the manager must take steps to ensure that the hearing is fair. The employee must be given full details of the allegations against him or her and be allowed to put their view through a representative and/or written statements.

10. Disciplinary Rules

The Disciplinary rules are divided into two main groups **Gross Misconduct & General Disciplinary Rules**.

10.1 Gross Misconduct

Cases of Gross Misconduct usually relate to offences which may result in dismissal without notice. The following list gives an indication of offences which could be regarded as sufficiently serious enough to be classed as Gross Misconduct. The examples are not exhaustive and should only be regarded as a general guide as much depends on the particular circumstances:

- Theft of Council's, clients' or employee's property.
- Housing Benefit or Council Tax fraud or deliberate falsification of timesheets or other records.
- Fighting, intimidation or physical assault.
- Deliberate damage to Council's, clients' or employees' property.
- Serious breach of the City of Lincoln Council's Code of Conduct.

- Conflict of interest/failure to disclose other employment or outside interests which could potentially lead to a conflict of interest arising.
- Serious breach of the dignity at work policy
- Deliberate disclosure of privileged and/or confidential information to unauthorised people.
- Falsification of particulars on seeking employment.
- Serious negligence which causes or might cause unacceptable loss, damage or injury.
- Serious disregard of health and safety rules.
- Disclosure of confidential or exempt information.
- Unauthorised removal of Council's, clients' or employees' property.
- Gross abuse or insubordination.
- Bringing the City of Lincoln Council into serious disrepute.
- Accepting bribes or inducements.
- Criminal activities.
- Breach of suspension conditions.
- Serious incapability whilst on duty brought on by alcohol or drugs.
- Serious breaches of an individual's human rights.
- Serious computer misuse or abuse.
- Serious breach of the Email policy
- Serious breach of Safeguarding policy.

10.2 General Disciplinary Rules

It is a principle of this scheme that employees will not be dismissed for a first offence unless it is gross misconduct. The following list gives an indication of offences, which could be regarded as misconduct serious enough to warrant disciplinary action. The examples are not exhaustive and should only be regarded as a general guide as much depends on the particular circumstances:

- refusing a reasonable instruction
- unauthorised absence
- abusing the sickness procedure
- failure to report the offer of a bribe or inducement.
- Refusal to carry out reasonable instructions.
- lateness.
- Failure to comply with the sickness absence procedure.
- Failure to perform to standards as set out by City of Lincoln Council.
- Computer misuse or abuse.
- Unauthorised outside employment or self-employment.

11. The Conduct of a Disciplinary Hearing

11.1 Authority to conduct Disciplinary Hearings

Following the decision that there is a case to answer, the Presiding Officer will liaise with the employee to arrange the formal disciplinary hearing. However, should it be established that the severity of the case points towards potential gross misconduct. The Presiding Officer's must be appointed to hear the case This is because an employee may only be dismissed by Chief Officers.

11.2 A representative from either the HR or Legal Service will be in attendance at all disciplinary hearings as adviser. The Investigating Officer will present the case, and the employee under investigation will also be present.

11.3 HR are to be advised of the details of all witnesses who will be required in order to ensure that they are available to attend and make the necessary arrangements. Please note, that character witnesses should only be called in exceptional circumstances.

11.4 Notice of a hearing

The employee will be given at least ten working days notice in writing of a disciplinary hearing following the completion of the investigation, unless the employee and Presiding officer agree to a shorter timescale, for example the availability of a Trade Union Representative because of planned annual leave. They will be provided with a copy of the disciplinary procedure and advised in writing of:

- The date, time and venue of the hearing.
- Substance of the complaint(s) against them, including copies of statements and other documentary evidence, together with the Investigation Report.
- The purpose of the hearing and its possible consequence. In particular, where the allegations, if proven, would amount to gross misconduct, the worker must be advised at this stage that dismissal could result.
- His/her right to representation
- The procedural arrangements for the hearing.

11.5 Normally, all evidence supporting the allegations that will be used in the hearing, will be copied to the employee ten working days in advance of the hearing itself. Should additional evidence come to light after this time, any requests to submit it must be made at least 48 hours prior to the hearing. Requests for later submissions will be entirely at the discretion of the Presiding Officer.

11.6 Potential Outcomes/Sanctions

The following outcomes can result from a hearing process, and there are four potential formal sanctions. The severity of the case will dictate the level of penalty to be applied.

11.7 No further action

If the allegations do not justify further action or there is no evidence to substantiate the allegations, the presiding officer can deem that there is no case to answer and therefore no further action is necessary.

11.9 Stage 1 - Verbal Warning

If conduct or performance does not meet acceptable standards, the employee will normally be given a formal **verbal warning**. They will be advised of the

reason for the warning, the improvement that is required and that it is the first stage of the disciplinary procedure and of their right of appeal. Arrangements should be made where appropriate for regular meetings, set at specific timescales in order to monitor and discuss the worker's conduct over the next three months.

A brief note of the verbal warning will be kept but it will be spent after 6 months and removed from the employee's personnel file subject to the employee's satisfactory conduct.

11.10 Stage 2 - Written Warning

If a further offence occurs within 6 months of a verbal warning, a **written warning** will be given to the employee. It may also be issued without a prior verbal warning for first breaches of discipline if the circumstances of the case justify this level of action. The warning will give details of the complaint, the improvement required and the timescale. It will warn that action under Stage 3 will be considered if there is no satisfactory improvement and will advise of the right of appeal.

A copy of this written warning will be kept by the Presiding Officer and HR but it will be spent after twelve months (in exceptional circumstances the period may be longer) subject to satisfactory conduct and performance.

Arrangements should be made for specific and regular meetings to monitor and discuss the employee's conduct over the next twelve months.

11.11 Stage 3 - Final Written Warning

If there is still a failure to improve and conduct remains unsatisfactory, within 12 months of a first written warning or in instances of misconduct or negligence which are sufficiently serious to not be tolerated a second time (in effect both first and final written warning), a **final written warning** will normally be given to the employee. This will give details of the complaint, specify the improvement required, and will warn that dismissal will result if there is no satisfactory improvement. It will advise of the right of appeal. A copy of this final written warning will be kept on the employee's personnel file but it will be spent after two years (in exceptional circumstance the period may be longer) subject to satisfactory conduct.

Arrangements should be made for regular and specific meetings to monitor and discuss the employee's conduct over the next two years.

11.12 Stage 4 – Dismissal

If conduct is still unsatisfactory and the employee fails to reach the prescribed standards or if the employee is found to have committed gross misconduct or gross negligence, **dismissal** will normally result. Only Chief Officers or their nominated deputy can take the decision to dismiss. The employee will be provided with written reasons for dismissal, the date on which employment will terminate, the appropriate period of notice or pay in lieu of notice and the right of appeal within five working days. Where dismissal results, it is normally given without notice.

11.13 Other Recommendations

In some circumstances the presiding officer may make suggestions or recommendations to an employee / manager to avoid a similar incident from occurring again.

Examples of this might be:

- Employee is advised of the need to improve/adapt a particular skill or behaviour i.e. additional training may address the issue (code of conduct training)
- A change to working practices
- Mediation between employees

12. Appeals

12.1 An employee who wishes to appeal against a disciplinary decision should inform the HR Manager in writing, within five working days of the date of the letter notifying the decision regarding sanction. The employee must state in the letter the reason for the appeal.

12.2 If the appeal is on the basis of the:

- severity of the sanction awarded;
- basis of the decision of the presiding officer and whether it was reasonable;
- Inconsistencies of the process which can be put right by an appeal.

This will be heard as a review, however all information from the original investigation / hearing will be reconsidered and re-heard.

12.3 If the appeal is on the basis that relevant new evidence has come to light:

- which was not available at the original hearing
- would have potentially changed the outcome of the hearing, and on sight of that evidence either the HR Manager or Legal Services Manager agree this to be the case a re-hearing will be scheduled

This will be heard as a re-hearing.

12.4 Appeals hearings will take place as soon as possible following receipt of the appeal notification.

12.5 Any Appeal (both re-hearings or reviews) hearing can:

- Uphold the appeal
- Confirm the sanction applied at the previous hearing
- Award a lower sanction
- In exceptional circumstances award a higher sanction
- Dismiss the allegations and offer informal advice and guidance
- Dismiss the allegations on the basis there is no case to answer.

Following the review the outcome is final and the employee will have no further right of appeal.

13 Re-hearings

In the case of a re-hearing, a panel will be convened comprising of:

- An Officer of the same grade or higher than the original Presiding Officer who heard the case but who must not have previously been involved.
- A representative from the HR/Legal Service.

The purpose of a re-hearing is to start the process again as if the original hearing had not taken place. Therefore in line with this policy the new Presiding Officer must determine on the basis of the new evidence whether a further investigation or information is required in order to conduct a full and fair hearing.

Following the re-hearing an employee will have the right to appeal against the decision.

14 Reviews

In the case of a review the panel members will be determined by the sanction awarded at the original hearing.

Appeals against an oral, written warning or final written warning will be heard by an Appeal Panel comprising of a Chief Officer, of a more senior grade than the original Presiding Officer, but wherever possible from the same business area, who has not been involved in the matter at hand, together with a representative from HR or the Legal Services.

Any appeals against dismissal will be heard by the Council's Member Appeal Panel. A representative from Legal Services or HR will be present to support the Member Appeal Panel.

15 Dismissal

Where an employee has been dismissed the Appeal Panel may overturn the decision but do not have the authority to re-instate. This decision will rest with the Director who will have the option to:

- Re-instate
- Re-engage in an alternative capacity

In making this decision the Director should take into consideration the likelihood of industrial strife and any distrust between parties which may make re-integration into the workforce impossible. Where this is believed to be the case the matter must be referred to HR or Legal to determine a way forward.

16 Review of policy

This policy will be reviewed at intervals of three years, or earlier at the request of either the management or staff side.

**Human Resources
November 2017**

Approving Body & Date

JCC
Executive