

Disciplinary Procedure

1. Introduction

- 1.1 Lewes District Council expects all employees to be aware of the required standards of conduct and the levels of performance expected in their role within the Council. If employees fall below the required standards or their conduct is a cause for concern, managers will deal with the issue(s) promptly and consistently.

2. Informal Action

- 2.1 Where there is a case of minor misconduct or unsatisfactory performance line managers or departmental managers will in the first instance try to deal with the matter informally.
- 2.2 Managers will arrange to meet with the employee and discuss their concerns. This is often all that is required to improve their conduct or performance,
- 2.3 They will endeavor to deal with the matter quickly and confidentially. Agile working can be withdrawn at any time during this process to ensure improved performance, or as a consequence of misconduct.
- 2.4 If informal action does not bring about an improvement, or the misconduct or unsatisfactory performance is considered to be too serious to be classed as minor, managers should inform the employee of their dissatisfaction and invoke the Disciplinary Procedure.

3. Establishing the facts – Investigating the case

- 3.1 Before any formal disciplinary action is taken an investigation will be conducted to establish the facts of the case.
- 3.2 Investigatory meetings will usually be held by the line manager supported by a Human Resources Officer.
- 3.3 Notes and witness statements will be taken and employees will be asked to sign a copy of the notes to verify they are an accurate account. Copies of the notes will be given to the employee for their records.
- 3.4 There is no statutory right for an employee to be accompanied at a formal investigatory meeting however this may be allowed, at the manager's discretion.
- 3.5 Once the investigation is completed the appropriate Head of Department or Service will consider if there is a case to answer and the employee will be sent a letter confirming what will happen next.

- 3.6 An investigatory meeting will not automatically mean that a formal disciplinary hearing is inevitable.
- 3.7 If disciplinary action is not recommended the line manager may recommend alternative solutions such as invoking performance management, retraining, redeployment or the withdrawal of agile working.

4. Suspension

- 4.1. In certain cases suspension may be considered necessary. This may be before the investigation takes place which means the employee will be notified when to attend the investigatory meeting(s) or it may take place after the investigation has been completed.
- 4.2 Any suspension will be with pay and will be as brief as possible and is not, by itself, considered a disciplinary action or an assumption of guilt.
- 4.3 During suspension employees will be kept informed of the progress of the procedure either via their trade union representative or a nominated person.
- 4.4 Managers have the right to exclude or suspend employees from agile working, whilst under the formal disciplinary procedure or as part of the capability procedures whilst there are concerns about their performance or conduct.

5. Notification of disciplinary action

- 5.1 An employee shall have the right under this policy to be:
- notified in writing of the nature and reasons for the disciplinary action being considered
 - advised of the nature of the evidence against them
 - provided with written evidence including witness statements. In certain circumstances (e.g. to protect a witness) some information may be withheld from the employee
 - represented by a work-place colleague or trade union official
 - informed of the possible consequences of the disciplinary action
 - informed of the date, time and venue of the disciplinary hearing, which will be arranged without any unreasonable delay and who will be on the panel
 - informed of the right to appeal against any disciplinary action which results in a formal warning or dismissal.

6. Employees' right to be accompanied at a Disciplinary Hearing

- 6.1 Employees who have to attend a disciplinary hearing have a statutory right to be accompanied by a work colleague or trade union official or a person who has been certified by the trade union as being competent to accompany a worker at a disciplinary hearing.
- 6.2 However if it's believed that the person who is accompanying the employee would prejudice the hearing then this would not be seen as reasonable.

- 6.3 Companions will be allowed to address the hearing, put forward and sum up the employee's case and respond on their behalf. They will also be able to confer with the employee during the hearing. However they do not have the right to answer questions on the employee's behalf or address the panel if the employee doesn't wish it and they will not be able prevent the manager from explaining their case.

7. Disciplinary Hearing

- 7.1 In most circumstances, the hearing will be chaired by a more senior manager than the investigating manager.
- 7.2 Hearings will be held without unreasonable delay, and employees will be given reasonable time to prepare their case.
- 7.3 The line manager will ensure all parties have copies of the Management Statement of Case 10 working days before the hearing, along with details of any witnesses they intend to call. Employees will need to send any written evidence that they wish to submit to the panel five working days before the date of the hearing, including details of any witnesses they wish to call.
- 7.4 At the hearing, the line manager will be asked to present the Management Statement of Case, calling any witnesses as required. The employee will have the opportunity to ask questions of the line manager and the witnesses.
- 7.5 The employee will then be asked to present their case calling any witnesses as required. The line manager will have the opportunity to ask questions of the line employee and the witnesses.

8. Postponement of the hearing

- 8.1 If for genuine reasons the employee is unable to attend the scheduled hearing date or requests a postponement for legitimate reasons this will be considered by the chair based upon the facts. A revised date will be given, where possible, within 5 days of the original scheduled hearing date.

9. Decision and appropriate action

- 9.1 Once both parties have presented their case and the Chair has had an opportunity to fully explore the issues, the hearing will be adjourned during which the Chair will consider all the evidence they have heard. They will then make a decision as to whether disciplinary or any other action should be taken.
- 9.2 Employees will normally be told of their decision at the end of the hearing after an adjournment. If this is not possible they will be notified as soon as possible thereafter.
- 9.3 In every case this will be confirmed in writing within a reasonable period, normally within 5 working days.
- 9.4 The following disciplinary action can be taken.

First Written Warning

- 9.5 This will be issued where misconduct is confirmed or the employee is found to be performing unsatisfactory.
- 9.6 The letter confirming the disciplinary action will set out the nature of the misconduct or, in the case of poor performance, targets for improvement and timescales by which to achieve them. Any support and/or training that may be required to assist the employee will also be confirmed.
- 9.7 It will clarify that if there is a further act of misconduct or failure to improve performance within a set period, this would lead to the next stage of the disciplinary procedure.
- 9.8 It will outline the employee's right to appeal against the disciplinary action taken and the process they must follow to invoke these rights.
- 9.9 A record of the warning will be kept by HR and will be disregarded for disciplinary purposes after a period of 12 months.

Final Written Warning

- 9.10 If the employee's misconduct or unsatisfactory performance is sufficiently serious then they will be issued with a final written warning. This might occur when the employee's actions have had, or are liable to have, a serious or harmful impact on the organisation.
- 9.11 A final written warning will set out the nature of the misconduct or poor performance, the change in behavior or improvement in performance required and outlining the timescales, together with the support and training that will be put in place.
- 9.12 The employee will also be informed of the consequences of further misconduct, or the failure to improve their performance which could include dismissal or demotion or other contractual penalty.
- 9.13 It will outline the employee's right to appeal against the disciplinary action taken and the process they must follow to invoke these rights.
- 9.14 A record of the warning will be kept by HR and will be disregarded for disciplinary purposes after a period of 18 months.

Dismissal

- 9.15 The decision to dismiss will be taken by a senior member of staff such as Head of Department or Service, Director or equivalent or in their absence their nominated deputy.
- 9.16 The employee will be informed as soon as possible of the reason for the dismissal, the date on which the employment contract will end, the appropriate period of notice and if

they will be required to work this notice and their right to appeal and how they invoke this right.

- 9.17 If the employee's conduct is deemed to be gross misconduct and is so serious or has such serious consequences, they may be dismissed without notice including if this is a first offence. See Appendix A for examples of misconduct behaviours.

10. Appeal process

- 10.1 An employee who has been issued with a disciplinary warning or has been dismissed has the right to appeal against this decision.
- 10.2 Upon receiving the letter confirming the decision of the disciplinary hearing the employee has 5 working days to lodge an appeal against this decision.
- 10.3 The appeal must be in writing and addressed to the HR Manager and outlining the grounds for the appeal.
- 10.4 An appeal hearing will be arranged without unreasonable delay and will be heard by a manager who has not previously been involved with the disciplinary action.
- 10.5 An appeal against dismissal will be heard by a panel of Elected Members who have not previously been involved in the case.
- 10.6 The appeal manager / panel will hear the grounds of appeal from the employee and their representative who can be a work colleague or trade union representative and will also hear from the chair of the disciplinary panel who made the original decision and their reason behind it.
- 10.7 The appeal manager / panel will then make the decision if the disciplinary action and or the dismissal is upheld, or if it is to be changed, which can include reducing or increasing the level of the warning or withdrawing the notice of dismissal.
- 10.8 Appeal decisions will be confirmed in writing within a reasonable period, normally 10 working days.

11. Grievances

- 11.1 Where a member of staff raises a grievance during a disciplinary, the grievance may be temporarily suspended in order to complete the disciplinary. It may be possible in some cases where grievances and disciplinary or performance cases are related that they can be dealt with together.

12. Special cases – Trade Union Representatives

- 12.1 The disciplinary policy and procedures apply in the normal way to Trade Union representatives.
- 12.2 If after an investigation the case is referred to a disciplinary hearing the employee's consent should be obtained to discuss the case with an official employed by the union.

13. Special cases – Criminal Offences

- 13.1 If an employee is charged or convicted with a criminal offence it is not normally in itself a reason for disciplinary action.
- 13.2 However, if the actual charge or conviction has an impact on the employee’s suitability to do their job and their relationship with the colleagues, service users and the Council then invoking the disciplinary procedure may be appropriate.
- 13.3.1 A decision on disciplinary action will be taken on the basis of the information available to the panel and this could result in dismissal.

14. Special Cases – Safeguarding

- 14.1 In cases where the misconduct is of a safeguarding nature, the Safeguarding Children, Young People and Vulnerable Adults HR Procedure for Managing Allegations against Staff and Volunteers will be used alongside this Disciplinary Procedure.
- 14.2 Unproven allegations regarding safeguarding will be retained on employment records for 75 years after termination of employment.

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Examples of Gross Misconduct offences:

The following list provides examples of offences which are normally regarded as gross misconduct and, therefore, justifying summary dismissal. The list is neither exclusive nor exhaustive. Other offences not included in this list may be deemed to be gross misconduct, according to the circumstances in which they occur.

- Any act or threat of physical assault on anyone in the care of, service user or an employee of Lewes District Council
- Discrimination or harassment of another employee(s), or service users on the basis of age, disability, gender reassignment, marriage or civil partnership, race, religion or belief, sex and sexual orientation.
- Bullying or harassment of another employee or member of the public
- Sexual offences or sexual misconduct at work or outside of work that could bring the Council names into disrepute.
- Theft, fraud, accepting bribes or other dishonesty
- Deliberate falsification of time sheets, expenses claims, records or any documents relating to LDC business
- Persistent or serious unauthorised or unreasonable absence
- Deliberate disclosure of confidential information (subject to Public Interest (Disclosure) Act 1998 considerations.
- Public criticism of the Council with the intent of bringing it in to disrepute
- Setting up a business in competition with the services provided by the Council

- Providing false information to support an application for employment or failure to disclose material information relevant to the appointment
- Deliberate damage to or misuse of property belonging to LDC, other employees or service users
- Incapability through alcohol or being under the influence of illegal drugs at any time when at work or when representing the Council
- Serious negligence which causes unacceptable loss, damage or injury
- Serious or willful breach of the health and safety policies and procedures, including deliberate damage or misuse of safety equipment
- Serious act of insubordination or persistent refusal to comply with policies and procedures or a reasonable management instruction
- Serious breaches of confidentiality or other action seriously prejudicial to the interests of the Council.
- Unauthorised use or misuse of the Council's IT systems and equipment including deliberately accessing internet sites containing pornographic, offensive or obscene material.

Examples of Other Misconduct Offences

The following list provides examples of offences which are normally regarded as misconduct and, therefore, justifying action under the Disciplinary Procedure. Other offences not included in this list may be deemed to be misconduct, according to the circumstances in which they occur, and this list is not exclusive or exhaustive.

- Failure to follow reasonable instructions, policies, practices and procedures
- Failure to follow appropriate standards of dress and appearance including not wearing protective clothing when required by the Council.
- Verbal abuse or swearing towards employees or members of the public
- Abuse of a position of authority or attempting to use an official position for private advantage
- Poor timekeeping or failure to notify the employer of sickness absence
- Unauthorised absence as a result of taking leave without advance permission
- Failure to produce medical certificates when required or otherwise to comply with sickness policies and procedures
- Unauthorised contact with the media

- Contravention of equal opportunities policies and procedures (other than harassment, which is dealt with under gross misconduct)
- Misuse of LDC property, equipment or vehicles
- Failure to observe safety rules and other aspects of health and safety policy and procedures.

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