



Disciplinary procedure – Guide for Managers

1. Introduction

- 1.1 *The Disciplinary Procedure is approved by Cabinet after consultation with the recognised trade unions.*
- 1.2 The disciplinary procedure provides a framework for dealing with issues where employees have allegedly not met the required standards of conduct, performance, or have breached a Lewes District Council policy or procedure. The aim of this procedure is to ensure prompt, consistent and fair treatment for all employees, to assist managers in their application of the procedure and set out the expectations of both parties.

2. Informal meetings

- 2.1 Managers are responsible for addressing their employees' conduct and behaviour issues as early as possible and for taking the appropriate action to resolve any problems.
- 2.2 They should seek to resolve issues informally as and when they arise, by discussing them with the employee in an informal meeting to explain their concerns and agree what actions need to be undertaken to achieve the required improvements. Often appropriate steps can be taken to resolve issues on this informal basis without recourse to the formal procedures.
- 2.3 Managers should consider the views of the employee and/or any mitigating circumstances that may be affecting their conduct; this may include personal issues or problems in the work environment.
- 2.4 Informal meetings and discussions should cover the following points;
- The nature of the concerns
 - The expected standards of conduct or performance
 - What is required by the employee to reach the required standards
 - Timescales for the required improvement
 - Review dates to meet up and review progress
 - The potential consequences of the employee not achieving the required standard or showing that improvements have been made should be made clear
- 2.5 Notes should be made recording the discussions and to confirm the outcome, outlining the targets agreed and the timescales for the improvements. These should be retained by the manager to review the employee's progress against and a copy given to the employee. If the matter is not resolved through the informal procedure then these notes may go on to form part of a formal investigation into the matter.

- 2.6 If the issue concerning the employees' performance is not resolved under the informal procedures they may fall under performance management and advice should be sought from HR.
- 2.7 Where issues are of a more serious nature or the informal procedure hasn't achieved the desired results then a formal approach may be required.

3. Investigation

- 3.1 An investigation will normally be appropriate in cases where an employee is believed or suspected to have committed an act of misconduct, serious misconduct, or acted in a serious breach of any of the Council's policies or procedures.
- 3.2 Investigatory meetings will usually be held by the line manager supported by a Human Resources Officer. In certain circumstances an alternative manager or an independent external investigator may be required, especially in cases of a serious nature or when senior managers are under investigation.
- 3.3 The manager will write to the employee outlining the allegations and confirming that an investigation will be undertaken to establish the facts. The investigation may include speaking to other employees and/ or managers who are relevant to establishing the facts of the case.
- 3.4 The manager should give the employee an opportunity to raise any concerns or ask any questions about the process and confirm that they are able to attend the investigation meeting. The employee should also be made aware that an investigation does not mean that they have been judged guilty of any wrongdoing, but rather that there are circumstances that merit investigation.
- 3.5 The purpose of the investigation is to:
- establish the nature of the allegation
 - establish all the relevant facts
 - allow the employee to respond to the allegation
 - gather evidence to enable a decision to be made on whether or not there is a disciplinary case to answer
 - consider if the matter should proceed to a disciplinary hearing or be dealt with informally
 - (if the matter is to be dealt with informally) consider what support, training may be required, if agile working should be withdrawn or suspended, or if redeployment may be the solution.
- 3.6 The length of the investigation and how wide it's remit will be will depend on the nature and number of allegations being investigated, however it should be concluded as soon as reasonably possible whilst allowing sufficient time to interview all the relevant parties and witnesses and evaluate all available evidence.

4. How to conduct an investigatory interview

- 4.1. It's important that the manager always contacts their Human Resources Officer before embarking on an investigation.
- 4.2 An investigatory interview is not the same thing as a disciplinary interview and line managers need to take care to differentiate between the two. An investigatory

interview should not stray into disciplinary territory, e.g. to express criticism of the employee, pass judgments or make premature decisions about what the outcome should be.

4.3 Prior to holding an investigatory interview with the employee, the investigating manager should prepare a list of questions based on what is known or believed to have happened.

4.4 During the interview itself, the manager should:

- state what is known or believed to have happened and give the employee the opportunity to comment i.e. to agree or disagree and/or state an alternative version of events
- stick to facts (as far as they are known) and avoid expressing opinions
- point out and question any discrepancies between different versions of events
- try to distinguish between facts and assumptions/opinions
- not be afraid to challenge what the employee has to say where appropriate
- keep an open mind, whatever the evidence might be
- try to make sure that the whole story is uncovered
- be patient with the employee, it may be necessary to repeat key questions or go back over ground previously covered

4.5 An investigation might involve the need to:

- check whether there is any relevant documentation on the employee's file e.g. previous warnings, and whether these are still "in date"
- identify witnesses who may have seen or heard something relevant
- arrange to interview those witnesses as soon as possible to establish their versions of events
- take an objective and balanced view of the information that comes to light
- avoid allowing personal views and opinions to influence the assessment of the employee's conduct.

4.6 Once the investigatory interview is over, the manager should produce a written report summarising the information gathered from the investigation.

5. Interviewing witnesses and witness statements

5.1 Depending on the matter being investigated, there may need to be interviews with colleagues of the employee, i.e. anyone who may have seen or heard anything relevant, or who may otherwise have knowledge of the employee's conduct or the circumstances surrounding it.

5.2 The manager should:

- reassure the witness that the purpose of the interview is to gather information
- explain that his or her assistance is important, and why
- seek to uncover every aspect of the story
- ask probing questions and not be afraid to wait for answers
- avoid leading questions, i.e. those that indicate the expected answer
- be wary of generalisations or vague, woolly statements, instead ask for specifics

- clarify whether information being given by a witness is a known fact or is his or her opinion
- ask the witness (where appropriate) whether he or she is completely sure of what he or she saw or heard, or whether there could be an alternative interpretation
- refrain from drawing over-hasty conclusions.
- take a reasoned decision whether to recommend disciplinary proceedings against the employee, based on the balance of probabilities principle if necessary.

5.3 The manager should also consider objectively whether a particular witness' version of events is likely to be reliable. There are various reasons why a particular witness may not be reliable, for example he or she may:

- be genuinely mistaken
- be exaggerating
- be basing his or her evidence on opinion or assumption, rather than on fact
- be allowing emotion to get in the way of rationality
- have a personal grudge against or dislike the accused employee

6. Conclusion of the investigation

6.1 Upon conclusion of the investigation the manager will consider all the relevant facts of the case taking into consideration all the witnesses statements and any mitigating circumstances. They will then decide whether there is a case to answer and whether or not there are reasonable grounds to conclude that a disciplinary hearing is required.

6.2 In making the decision the investigating manager should:

- take into account all the evidence, including the employee's version of events
- view the matter objectively and impartially

6.3 They will then decide whether to:

- drop the matter, if there is no evidence of misconduct
- deal with the issue informally in consultation with the employee
- refer the matter to be dealt with at a formal disciplinary hearing

6.4 If the manager decides that a disciplinary hearing should take place, this will usually be chaired by a more senior manager than the investigating manager.

6.5 The investigating manager will prepare a Management Statement of Case which will be sent to the employee 10 working days in advance of the hearing. The employee should submit any evidence they wish to present to the Chair 5 working days in advance of the hearing.

6.6 At the hearing the 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.

6.7 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 employee and the witness.

7. Right to be accompanied to an investigation meeting

- 7.1 Although there is no statutory right to be accompanied to an investigation meeting, the employee will be able to be accompanied by a trade union representative or a work colleague who is not involved in the wider allegation.
- 7.2 Witnesses who are asked to attend a formal investigation meeting don't have the right to be accompanied

8. Suspension from work

- 8.1 It is usually appropriate to suspend an employee from work where any of the following circumstances exist:
- the employee's conduct or behavior would, if proven, be grounds for gross misconduct
 - the alleged conduct involved theft, violence or threatened violence
 - it's thought that the employee might deliberately cause damage if he or she is allowed to remain at the workplace, e.g. by deleting computer files
 - the employee's continuing presence at work might prejudice the investigation, e.g. he or she might try to exert influence over witnesses
 - the matter under investigation is of a highly sensitive nature, for example harassment or vulnerable adults or child protection issues.
- 8.2 The purpose of a suspension from work is to allow the investigation to proceed unhindered. Minor matters which, if proven, would lead to a warning would not normally provide a valid reason to suspend the employee.
- 8.3 The employee should be notified in writing of the following;
- the reason for the suspension
 - confirming the suspension is not a disciplinary sanction, but is a precautionary measure
 - how long the suspension is expected to last (it should be for as short a period as possible)
 - that the suspension will be kept under review.
- 8.4 Suspension will be on full pay.
- 8.5 If the employee under investigation is not suspended but, during the course of the investigation or after its completion, the manager uncovers evidence to suggest that the alleged misconduct is more serious than had originally been thought, he or she may then be suspended at this point in the process.

9. Records

- 9.1 Upon completion of the investigation, the manager's report on the investigation and its conclusions will be retained on confidential filing for a reasonable period of time.
- 9.2 The length of time will depend on the outcome of the investigation.

- If the investigation leads to disciplinary proceedings being taken against the employee and if these proceedings result in a warning, the report should be kept on file for the same duration as the warning
- If the employee is subsequently dismissed, the report (along with a record of the disciplinary proceedings) should be held on the employee's personal file under the Council's retention of data policy.
- If it is decided at the conclusion of the investigation that there are no grounds for invoking disciplinary action against the employee, the investigation report should be retained only for as long as is necessary to fulfill the purpose of investigation.

9.3 All records should, of course, be handled confidentially and in accordance with the Data Protection Act 1998.

10. Human Resources support

10.1 The HR department will throughout this process provide support, advice and guidance to managers and employees who are involved. They will:

- provide information and advice regarding relevant employment laws
- provide any relevant background information from the employee's personal file, e.g. whether there have been any previous disciplinary warnings
- give advice on confidentiality and data protection issues
- accompany the manager during any investigatory interviews, if appropriate
- assist in explaining to the employee under investigation what procedures are being carried out and what his or her rights are
- upon completion of the investigation, support the line manager in coming to a conclusion as to whether there are grounds to instigate disciplinary action against the employee.

10.2 It is always advisable for the investigating managers to liaise closely with HR once the disciplinary policy has been invoked.

11. Formal procedure

11.1 If the decision is to proceed to a disciplinary hearing the employee must be given adequate notice and invited in writing to attend a formal meeting.

The letter will be generated by HR, including a copy of the disciplinary procedure specifying the following;

- The name of the manager who will be conducting the hearing
- the date, time and venue of the hearing
- details of the allegations(s)
- possible consequences of the offence to enable the employee to prepare to answer the case at the hearing
- right to be accompanied at the hearing

11.2 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

11.3 The hearing should be held without reasonable delay whilst allowing the employee reasonable time to prepare their case.

12. Right to be accompanied to a disciplinary hearing

12.1 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.

12.2 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.

12.3 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.

13. The Disciplinary Hearing

13.1 The chair will be supported by a HR representative who will offer guidance and support and ensure that the proceedings following the correct format.

13.2 The purpose of the disciplinary hearing is to provide the opportunity for the manager to state their case and for the employee to respond to the allegations or complaints.

13.3 The chair of the disciplinary panel will oversee the management of the hearing and will:

- ensure that it is conducted in a fair and open way, and that the employee is given opportunity to put across their case
- ensure the employee understands the timetable of the hearing, when they can call their witnesses etc
- at the hearing they will sum up what has taken place and confirm what will happen next
- adjourn the hearing to allow an informed and considered decision to be made

13.4 If either party raises facts about which the panel was previously unaware it may be necessary to adjourn the hearing to allow further investigation to take.

13.5 Notes will be taken of the hearing.

13.6 A disciplinary hearing may be postponed because the employee has been absent from work due to stress or other medical condition and is unfit to attend the hearing or put their case in writing. This should however be supported by a medical opinion and a hearing will usually only be postponed once.

13.7 It can be held in the employee's absence if the panel have made proper enquires, including medical ones that the employee is fit and able to attend a hearing after alternative dates have been offered and the employee unreasonably declines to do so without just cause.

13.8 If the employee is persistently unable or unwilling to attend a disciplinary hearing without good cause the panel will make a decision based upon the evidence they have available.

14. Deciding the outcome

14.1 Once the hearing has been completed the chair should adjourn the hearing to carefully consider all the circumstances of the case including:

- all the evidence from both sides, verbal and written
- the witness evidence
- the facts surrounding the case
- additional circumstance and any mitigation
- the balance of probabilities

14.2 If the chair decides that disciplinary action is taken they must identify the most reasonable penalty.

14.3 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.

15. The disciplinary action

15.1 Disciplinary action that a chair imposes must be in proportion to the offence committed by the employee.

15.2 First written warning

In cases of misconduct, employees should be given a written warning setting out the nature of the misconduct and the change in behaviour required with time scales for review.

The written warning should also inform the employee that if further misconduct arises a final written warning may be considered.

A record of the warning should be kept, but will be disregarded for disciplinary purposes after a period of 12 months.

The letter will confirm the employee's right to appeal against the disciplinary action.

15.3 Final written warning

If the employee has a current warning about conduct or performance then further misconduct or unsatisfactory performance may warrant a final written warning.

This may also be considered where a first offence of misconduct is sufficiently serious but would not justify dismissal.

The warning would remain current for a period of 18 months and would also confirm that further misconduct or unsatisfactory performance may lead to dismissal.

The employee will be informed of their right to appeal.

15.4 Alternative action

The chair may feel they wish to consider alternatives such as:

- Transferring the employee to a different department
- Transferring the employee to a different role
- Taking away flexible working rights
- Taking away remote working rights

The chair should discuss these sanctions with the HR officer supporting the hearing.

16. Dismissal

16.1 If the chair believes that dismissal is the most appropriate option they must satisfy the following factors:

- A genuine belief that the employee was guilty of the misconduct
- They have reasonable grounds for that belief
- That a reasonable investigation had taken place looking at all the circumstance of the case

16.2 The employee must be informed in writing for the reason for the dismissal and the date their contract will end and their right to appeal with the appropriate timescales.

17. Right of appeal

17.1 Employees must be informed of their right to appeal in writing against any disciplinary action including dismissal and the following information must be provided to them:

- That they should appeal in writing within 10 working days of receiving the letter confirming the disciplinary action
- Who the letter should be addressed to
- That they should outline the grounds for the appeal
- Their right to be accompanied to any appeal hearing

17.2 The appeal hearing will be heard without unreasonable delay and the panel will consist of managers who have not previously been involved in the case (for appeals against warnings) or a panel of Elected Members who have not previously been involved in the case (for appeals against dismissals).

17.3 The appeal panel can decrease and increase warnings and reinstate a dismissed employee.

18. Disciplinary matters that can lead to a Grievance

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

18.2 The grievance will be dealt with by a manager who has not been involved in the disciplinary process to date.