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Lewes District Council



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1. Introduction

- 1.1. The councils are committed to ensuring all employees meet the required standards of conduct. Employees who do not meet the standards will have an impact on the service we provide. 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.
- 1.2. The procedure provides a framework for managers to work with employees to achieve and maintain acceptable standards of conduct. The aim is to ensure consistent and fair treatment for all employees.
- 1.3. Minor cases of misconduct by an employee may be best dealt with informally. A quiet word is often all that is required to improve an employee's conduct, by advising the employee that there is an issue, and that a repetition could lead to formal disciplinary proceedings.
- 1.4. An informal discussion is also an opportunity to identify if there are any training or development needs that could be addressed to solve the problem
- 1.5. Agile working/working from home can be withdrawn at any time during this process to ensure improved performance, or as a consequence of misconduct.
- 1.6. 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 concerns and invoke the Disciplinary Procedure.
- 1.7. This procedure does not apply to:
 - Matters of capability, please refer to the capability procedure
 - Employees, who have not yet completed their probationary service, please refer to the probationary review procedure.
- 1.8. This procedure is not contractual and the councils reserve the right to enter the process at any stage and adjust the procedure where relevant to individual circumstances.

2. Equality and Diversity

- 2.1. Where a staff member requires reasonable adjustments to attend and/or participate in a disciplinary meeting, they may be accompanied by an appropriate person to provide support, in addition to their right to be accompanied by a colleague or trade union official.
- 2.2. The manager responsible for the meetings at each stage will ensure reasonable adjustments and special arrangements are made. This includes ensuring information is in an accessible format, that meeting arrangements/venues are accessible to all parties and that reasonable adjustments are made to enable fair and complete participation by all parties.
- 2.3. Staff members are invited to advise their line manager and subsequent managers of their needs and requirements to ensure they are fulfilled throughout the process wherever possible. This right is also extended to the appeal hearing.

3. Principles

- 3.1. Employees and managers are expected to be familiar with the standards of conduct that apply in the workplace including those detailed in the councils Code of Conduct and the behaviours outlined in the council's Core Competencies.
- 3.2. The councils are committed to ensuring that there is no unlawful discrimination and bias in the application of this procedure. Action taken under this procedure will therefore be monitored to ensure fairness.
- 3.3. To ensure fair treatment and, where appropriate, provision of support by the councils in the application of this procedure, employees are invited to provide information about any equality or diversity matters which may be relevant.
- 3.4. There may be circumstances where conduct outside work may make an employee's continued employment untenable.
- 3.5. The councils will not take disciplinary action until the circumstances of a case have been investigated. Investigatory meetings will usually be held by a Manager or Team Leader supported by a HR Business Partner. An investigatory meeting does not automatically mean that a formal disciplinary hearing is inevitable.
- 3.6. This policy applies in the normal way to trade union representatives. Where an alleged act of misconduct is believed to have been committed by an employee who is an accredited official of a recognised trade union, reasonable steps will be taken to discuss the circumstances of the case with either the Branch Secretary or with the Regional Officer prior to any formal disciplinary sanctions being applied.
- 3.7. Employees will be notified in advance of any formal disciplinary meeting and have the opportunity to be accompanied by a trade union representative or nominated colleague from within the councils. At any formal hearing a HR Business Partner will be present accompanying the manager, asking questions as appropriate and providing advice on procedural matters. A HR Assistant may also be present taking notes.
- 3.8. If disciplinary action is not recommended there may still be recommendations for invoking performance management, retraining or the withdrawal of agile or flexible working.
- 3.9. The councils will not dismiss employees who breach standards of conduct for the first time, except in cases of gross misconduct.
- 3.10. The time limits referred to in this procedure may be varied by agreement.

4. Definitions

4.1. Misconduct refers to a breach of the standards of conduct expected of all employees. The following list provides examples of misconduct. Other offences/behaviours 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
- Unreasonable language or behaviour
- Lateness or unauthorised absence
- Misuse of council property, equipment or vehicles

4.2. Gross misconduct is regarded as misconduct of such a nature that it represents an irrevocable breakdown of the relationship between the employee and the council and justifies the council in no longer accepting the continued presence of the employee at the workplace. The council will be entitled to terminate summarily the employee's contract of employment without notice or pay in lieu of notice. The following list provides examples of offences which are normally regarded as gross misconduct and therefore could justify summary dismissal. This 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:

- Dishonesty or abuse of position: receipt of money, goods, or pecuniary advantage in respect of any services rendered, accepting bribes or tips, either to gain business or for personal gain, unauthorised use of Council materials, equipment, facilities or other resources for private purposes;
- Theft of council property, stealing from members of staff or the public;
- Defrauding the council; any deliberate attempt to defraud the council or a member of staff or member of the public. This includes falsification of records including financial claims (time sheets, sickness claims, expenses etc.), and failure to declare inaccurate information at the time;
- Deliberate damage – causing damage to the property or the reputation of the council, clients, other employees or members of the public, including breaches of confidentiality and trust and unauthorised disclosure of information classified as confidential by the council;
- Assault/violence: a physical or verbal assault on a fellow employee/worker or member of the public
- Discrimination, bullying or harassment of another employee (s), or customer on the basis of either any characteristic protected by the Equalities Act or any personal reference
- Acts prejudicial to the council (inside or outside of work)
- Criminal offenses committed outside working hours which render the employee unsuitable for continued employment with the council or bring the councils into disrepute

- Persistent or serious unauthorised or unreasonable absence
- Public criticism of the Council which brings it into disrepute including on social media
- Serious breaches of confidential or any other acts prejudicial to the council interests, inside or outside of work
- Engaging in politically restricted activities, as defined by the Local Government and Housing Act 1989, when holding a politically restricted post
- Negligent behaviour – any action or failure to act which seriously threatens the Health and Safety of an employee or member of the public or causes unacceptable loss, damage or injury.
- Incapability through alcohol or being under the influence of illegal drugs at any time when at work or when representing the council
- Refusal to carry out a reasonable management instruction

5. Summary of disciplinary procedure

5.1. The disciplinary procedure contains the following stages:

TYPE OF MISCONDUCT	SANCTION	VALID
Minor Matter	Informal action Meeting with the employee	Discussions confirmed in writing
Misconduct	First written warning	12 months
Serious or repeated misconduct	Final written warning	12 months
Serious or repeated misconduct	Dismissal with notice	
Gross misconduct	Dismissal without notice	

6. Informal Action

- 6.1. Minor conduct issues should be raised with the employee as soon as possible. The manager should be very clear with the individual about the shortfall in conduct, explaining the standard required. Taking the employee's feedback into account, clear standards for improvement will be agreed. The manager will summarise the discussion in writing and send to the employee.
- 6.2. There will be situations where matters are more serious or where an informal approach has been tried and not worked. If informal action does not bring about improvement, or the misconduct is considered to be too serious to be classed as minor, the formal procedure should be implemented.

7. Formal Action

- 7.1. Where a disciplinary investigation is required, all allegations should be thoroughly investigated by the employee's immediate line manager. There may be occasions when it is not appropriate for the line manager to undertake the investigation because they are involved in some way in the matter to be considered. In this event, another appropriate manager will undertake the investigation. This person will be known as the Investigating Officer and will be advised by a HR Business Partner. Where possible, the employee will be informed in writing of the situation, the broad nature of the allegations and the procedure to be followed.
- 7.2. The Investigating Officer will undertake a thorough investigation into the matter. The employee's explanation of events will be obtained and witnesses interviewed and asked to provide statements where this is appropriate. The employee and witnesses will be advised that information gained by questioning him/her can be presented at any subsequent disciplinary hearing.
- 7.3. The Investigating Officer may call on other council employees to supply information which will assist in the investigation. Where other employees are questioned, it will be explained to them that they may be asked to provide a statement and/or attend a disciplinary hearing and act as a witness. Their statement will be provided to the employee under investigation as part of the process.
- 7.4. The Investigating process will be concluded as quickly as possible and where practical, within 10 days of the manager becoming aware of the matter or the Investigating Officer being asked to conduct an investigation.
- 7.5. Once the Investigating Officer has completed the investigation they should complete an investigation report that will be passed on to a senior manager who will decide if there is a need to pursue disciplinary action.
- 7.6. If after the investigation the decision is taken that there is no need for formal proceedings, the employee will be informed of this.
- 7.7. If management advice, counselling or training is required, this will be confirmed in writing to the employee. The manager will monitor and review the employee's conduct to ensure that required standards are met.

8. Suspension

- 8.1. In some circumstances suspension may be considered necessary. The employee may be suspended from work while the investigation proceeds or moved to other duties if appropriate. This may be before the investigation takes place which means the employee will be notified when to attend the investigatory meeting(s).
- 8.2. Any suspension will be on full basic pay and will be as short as possible. It is not, by itself, considered a disciplinary action or an assumption of guilt. Suspension will normally last until an investigation has been concluded or any disciplinary hearing has been held.
- 8.3. During suspension employees will be kept informed of the progress of the procedure either via a HR Business Partner, the Investigating Officer, a nominated person or their Trade union representative.
- 8.4. The provisions to suspend from work should only be used in exceptional circumstances and only then on the specific instruction of a Senior Manager and in conjunction with either the Head of HR or Assistant Director for HR and Organisational Development.
- 8.5. Employees who are signed unfit to work during a period of suspension will be subject to the Attendance Management Policy and may be required to attend an appointment with the council's Occupational Health advisor. Their sickness will not necessarily lead to a deferment of the disciplinary investigation.
- 8.6. Employees on suspension must not enter council offices or discuss the circumstances relating to their suspension with colleagues or third parties unless they have prior permission to do so from the suspending officer. If an employee wishes to collect personal belongings they must contact Human Resources to arrange to be accompanied. In addition, the suspended staff member is expected to be available within normal working hours to assist with the investigation or return to work if required.

9. Disciplinary Hearing

- 9.1. Where it is decided to refer the case to a disciplinary hearing the employee will be given at least five working days' notice of the date of the hearing.
- 9.2. The invitation to the disciplinary hearing will clearly state the allegations against the employee, the right to representation, copies of the management case, the sanctions that could be given to them and any supporting information which may be referred to at the hearing, including any witness statements.
- 9.3. The employee will be invited to submit a response in writing to the allegations along with any supporting statement or documentation by a specific date and time prior to the hearing.
- 9.4. The employee is entitled to be accompanied by either an accredited trade union representative or a workplace colleague. It is not normally appropriate for an employee to be accompanied by a member of their management team.
- 9.5. The employee will be allowed to ask questions, present evidence and be given an opportunity to raise points about any information provided by management and witnesses.
- 9.6. Representatives or colleagues will be allowed to address the hearing, put questions 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 does not wish them to and they will not be able to prevent the manager from presenting their case.
- 9.7. The person hearing the disciplinary (Deciding Officer) will be of the same grade or more senior than the Investigating Officer. The Deciding Officer will be supported by a member of the HR Team. The person hearing the disciplinary will decide what action, if any, is necessary.
- 9.8. The Investigating Officer will not take part in deciding any disciplinary action but will be asked to present the case at the hearing.
- 9.9. In circumstances where a possible outcome could be dismissal, the Deciding Officer, will be the Head of Service or a Chief Officer, or exceptionally another Senior Manager. This will be in consultation with the Head of HR or Assistant Director for HR and Organisational Development although they may not be present at the hearing.
- 9.10. At the hearing the Investigating Officer will be asked to present the management statement of case, calling any witnesses as required. The employee and the deciding officer will have the opportunity to ask questions of the Investigating Officer and witnesses.

- 9.11. The employee will then be asked to present their case calling any witnesses as required. Both the investigating officer and deciding manager will have the opportunity to ask questions of the employee and any witnesses.
- 9.12. Once both parties have presented their case and the Deciding Officer has had an opportunity to fully explore the issues, the hearing will be adjourned so they can decide on appropriate action.
- 9.13. The Deciding Officer will consider whether on the balance of probability the allegation(s) have been substantiated and determine any disciplinary action. It is sufficient that the employer genuinely believes on reasonable grounds that the employee is guilty of misconduct. The Deciding Officer will take into account the employee's current disciplinary and general record, length of service, actions taken in any previous similar case, the explanations given by the employee and any mitigating circumstances. The Deciding Officer should also consider whether the disciplinary action is reasonable under the circumstances.
- 9.14. If, at the end of the hearing, the Deciding Officer decides that the circumstances justify a formal warning, consideration should be given to the level of warning.
- 9.15. If the deciding officer can make a decision at the end of the adjournment then it will be communicated to the employee. If more time is required the decision will be communicated within 5 working days of the meeting.
- 9.16. The outcome will be one of the following:
- A First written warning
 - A Final written warning
 - Dismissal
 - No further disciplinary action/management advice
- 9.17. Other additional sanctions which may be considered include removal or withholding of increments, withdrawal of flexible or agile working and other measures such as an individual action plan.
- 9.18. If the employee is unable to attend the hearing for exceptional reasons or due to the unavailability of their representative they can request a postponement. An alternative date will be arranged, where practical within 5 working days of the first date. If they are unable to attend that meeting then it may be held in their absence and they will be given the opportunity to nominate a representative to present the case on their behalf.
- 9.19. If the employee is unable to attend owing to long term sickness absence and no alternative date can be mutually agreed, the meeting may proceed in their absence after taking advice from the council's Occupational Health

advisor. The employee's representative can attend to speak on the employee's behalf.

- 9.20. In the event that an employee raises a grievance or a dignity at work complaint in the course of the disciplinary process, the council may suspend consideration of the grievance or complaint until the outcome of the disciplinary process is known. Each case will, however, be considered on its merits to ensure that the council is acting reasonably. Where the grievance and disciplinary cases are related it may be appropriate to deal with both issues concurrently or if they are related they may be dealt with together.

10. Sanctions

First Written Warning

- 10.1. This will be issued where misconduct is confirmed and will set out the nature of the misconduct and the change in behaviour, attitude or performance required. This should also include targets for improvement and timescales by when to achieve them.
- 10.2. The employee should be informed of the consequence of failing to improve their behaviour or conduct which will be a final written warning and/or ultimately dismissal.
- 10.3. The first written warning will remain live for disciplinary purposes for a period of twelve months.

Final Written Warning

- 10.4. If the employee's misconduct is either sufficiently serious or is a previous or related matter that has not been resolved they will be advised accordingly and issued with a final written warning. This might also occur when the employee's actions have had, or are liable to have, a serious or harmful impact on the organisation.
- 10.5. This stage may apply either where there is further misconduct within twelve months of a first written warning being issued or where the misconduct is sufficiently serious to be dealt with in the first instance at this stage.
- 10.6. The final written warning should set out the nature of the misconduct and the change in behaviour required. It should inform the employee that further misconduct or failure to modify behaviour within the set period following a final warning may result in dismissal or some other sanction such as demotion to a lesser graded post without salary protection or transfer to another identified post within the Service Area.
- 10.7. The final written warning will remain live for disciplinary purposes for a period of 12 months.

Dismissal

- 10.8. The final stage in the disciplinary process will be dismissal. This stage may only apply in either of the following circumstances:
 - Further misconduct within twelve months of a warning being issued or in the event a warning has been extended within the extension period of the warning;
 - Gross misconduct which will be dealt with in the first instance at this stage

- 10.9. Where conduct is so serious as to warrant summary dismissal, the employee may be dismissed without notice.
- 10.10. For an act of gross misconduct, dismissal will be without notice or payment in lieu of notice (summary dismissal).
- 10.11. For an act of further misconduct which in itself is not gross misconduct after a written warning has been given and remains on file, dismissal will be with notice.
- 10.12. The employee should be informed of the reasons for the dismissal, the date on which the employment contract will terminate, the appropriate period of notice and their right of appeal.
- 10.13. There may occasionally be exceptional circumstances where the Deciding Officer takes the view that whilst dismissal may be warranted, organisation and employee circumstance may best be served by action short of dismissal itself. In these circumstances, the following sanction may be considered as an alternative to dismissal only:
- 10.14. The issue of a final written warning, accompanied by one or more of the following sanctions:
- Transfer to another job
 - Demotion
 - Withhold annual pay increment
 - Mandatory training
- 10.15. If the employee does not accept the alternative sanction then an appeal hearing will be arranged with another member of the Corporate Management Team to consider the appropriate sanction.

11. Appeal

- 11.1. An employee has a right to appeal against the outcome of the disciplinary hearing. The appeal is to be made in writing to the Head of HR giving the reasons and submitted within 5 working days of the employee receiving the disciplinary warning or confirmation of dismissal.

Appeals against dismissal

- 11.2. The Assistant Director or Head of HR shall invite two elected members of the councils joint staff committee to be part of the Appeal panel, the third member will be a manager more senior than the Deciding Officer at the disciplinary hearing where possible and who has not been involved previously in the disciplinary procedure.
- 11.3. If the dismissal has been issued by a member of Corporate Management Team, the third member of the appeal panel will be another member of Corporate Management Team.
- 11.4. Within 10 working days of receipt of an appeal, the manager hearing the appeal shall arrange an appeal hearing with the employee. The panel will also hear from the Deciding Manager at the disciplinary hearing who made the original decision.
- 11.5. Employees can be accompanied by a colleague or trade union representative at the hearing and will be asked to confirm, no later than 5 working days before the hearing, if they intend to call any witnesses. Representatives may address the hearing to put forward and conclude the case, they do not have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish them to or prevent the managers from explaining their case.
- 11.6. Both the staff side and the management side (normally the Deciding Manager from the Disciplinary Hearing) may submit new evidence at the appeal panel; this should be provided at least 5 working days before the date of the appeal hearing.
- 11.7. Each appeal hearing may differ depending on the individual circumstances but normally the procedure will be:
- The parties and their representatives are introduced to the panel
 - The panel introduce themselves
 - Employee or representative explains why they are appealing
 - Employee or representative presents the case calling any witnesses
 - Management question employee, representative and any witnesses
 - Panel question employee, representative and any witnesses
 - Management present their case calling any witnesses

- Employee or representative question management and any witnesses
- Panel question management and any witnesses
- Management sum up, at this stage no new material can be introduced or points made to which reference has not already been made during the proceedings
- Employee, or representative, sum up. At this stage no new material can be introduced or points made to which reference has not already been made.
- Both parties leave the room while the panel considers the information presented.
- The panel may recall both parties to ask further questions of either, after which the parties will retire again
- The panel recalls the parties and advise if they have been able to make a decision and, if so, what that decision is. If it has not been possible to make a decision the panel will explain why and confirm next steps – whether hearing is to be reconvened or decision will follow in writing after further deliberation.

11.8. The panel will either uphold or reject the appeal; they can do so either in whole or in part. It is for them to decide if the disciplinary action and or dismissal is upheld, or if it is to be changed, which can include reducing or the level of the warning or withdrawing the notice of dismissal.

11.9. Where possible, a decision will be made at the conclusion of the meeting following an adjournment to consider the decision; this will be confirmed normally within 5 working days. Where further time is necessary to consider the appeal and/or make a decision this will be communicated in writing within 5 working days.

11.10. If an appeal regarding a warning is upheld that warning will be disregarded for disciplinary purposes.

11.11. If an appeal regarding a dismissal is upheld the employee will be reinstated in his or her employment on the original terms and conditions and the employee will receive any salary that would have been paid from the date of dismissal to the reinstatement date. In addition, a written warning or action short of dismissal and an additional sanction may be issued.

11.12. The decision of the appeals panel is final and there is no further right of appeal.

Appeals against action short of dismissal and an additional sanction

11.13. Appeals against any sanction short of dismissal will be heard where possible by a manager equivalent or more senior to the Deciding Manager at the disciplinary and who has not been involved previously in the disciplinary procedure.

- 11.14. If the appeal against the warning or additional sanction is rejected and the employee then accepts the additional sanction, there is no further right of appeal.
- 11.15. If the appeal against the additional sanction is rejected and the employee does not agree to the sanction being applied, then the outcome will be dismissal.
- 11.16. If the employee's appeal is upheld regarding the additional sanction then it will be removed and the level of warning will be considered. If the appeal against a final written warning is upheld then the warning may be reduced to a first written warning or removed.

12. Special Cases

Safeguarding

- 12.1. In cases where the misconduct is of a safeguarding nature the Safeguarding Policy will be used alongside this disciplinary procedure.
- 12.2. Safeguarding allegations against staff and volunteers will be retained on employment records for 10 years or until after retirement which is longer.

Criminal Offences

- 12.3. If an employee is charged or convicted with a criminal offence it may not normally in itself be a reason for disciplinary action. However, if the actual charge or conviction has an impact on their suitability or ability to do their job and their relationship with colleagues and customers or if it brings the Council into disrepute then the disciplinary procedure may be appropriate.
- 12.4. A decision on disciplinary action would be taken on the basis of the information available to the panel and this could result in dismissal.

13. Related Policies and Procedures

- 13.1. Grievance Procedure
- 13.2. Code of Conduct
- 13.3. **Capability Procedure**
- 13.4. Attendance Management
- 13.5. Whistleblowing