

Disciplinary Policy and Procedure

1. Who does this policy apply to?

- 1.1 All employees of Lancaster City Council, (LCC) except those who are in their probationary period (in which case the Probation and Appointment Review Policy applies), casual workers, Chief Officers and the Chief Executive (to each of whom it does not apply at all).

2. What is the purpose of this policy?

- 2.1 To provide a consistent and fair framework for addressing unacceptable behaviour and to encourage improvement amongst employees whose conduct is unsatisfactory. It is also to ensure that where the misconduct is so severe that dismissal is a potential outcome, alternatives are explored first, and the decision to dismiss is therefore a fair one. Dismissal will be considered only as a last resort.

3. What roles do management, the employee, the Council and HR play in this policy?

Management Responsibilities

- 3.1 Managing conduct is a line manager's responsibility. Managers must:
- Effectively communicate the standards of conduct expected;
 - Ensure employees understand the Council's Values and Behaviours;
 - Act upon instances of misconduct without delay and promptly engage HR;
 - Implement the Disciplinary Policy and Procedure consistently and in line with best practice as advised by HR;
 - Read and follow the Disciplinary Policy and Procedure, and any associated manager guidance to effectively contribute to the overall management of conduct issues;
 - Ensure that employees are released to co-operate with investigations and hearings as required;
 - Commit to dealing with minor issues of misconduct informally; and
 - Act fairly and impartially when tasked with investigation, or decision making in accordance with this policy and procedure.

Employee Responsibilities

- 3.2 Employees are responsible for ensuring they uphold the appropriate standard of conduct. Employees must:
- Comply with all Council wide, service specific and professional standards of conduct, including the Council's Values and Behaviours;

- ❑ Co-operate with the various stages of this policy and procedure by engaging with the fact-finding investigation and disciplinary hearing(s). This may also include acting as a witness in an investigation into someone else's alleged misconduct;
- ❑ Request any reasonable adjustments which may be necessary at any stage of the disciplinary procedure. Requests should be made to the Commissioning Officer at fact-finding stage and the Disciplinary Hearing Manager at the disciplinary hearing stage;
- ❑ Provide any evidence that they wish for an Investigating Officer or a Disciplinary Hearing Manager to consider as soon as possible (including naming any witnesses who they consider an investigating officer should speak with during the investigation stage).

Council Responsibilities

- 3.3 It is the Council's responsibility to ensure that employees, managers and HR are empowered to perform their responsibilities in connection with this Policy. Also, the Council must:
- ❑ Ensure that disciplinaries are considered fairly and consistently;
 - ❑ Ensure that reasonable adjustments are considered when requested;
 - ❑ Ensure that the Disciplinary Process and Procedure is in line with guidance provided by ACAS (Advisory, Conciliation and Arbitration Service).

HR responsibilities

- 3.4 The HR Team are responsible for supporting and advising managers and employees, and thereby contributing to the maintenance of proper conduct. HR will:
- ❑ Routinely update the Disciplinary Policy and Procedure, and ensure that appropriate training is implemented for managers;
 - ❑ Advise managers on all aspects of the Disciplinary Policy and Procedure and provide guidance on best practice and consistency;
 - ❑ Provide support during disciplinary hearings and other formal disciplinary meetings when required;
 - ❑ Promote and support the Council's Values and Behaviours

4. Misconduct or gross misconduct: what is the difference?

- 4.1 It would be impossible to provide a list of examples to cover all scenarios which the Council would consider to be misconduct or gross misconduct. However, it is important to understand what the Council considers to be the difference and how incidents will therefore be approached.
- 4.2 For matters of minor misconduct, the Council will firstly consider informal action. Examples of minor misconduct could be poor timekeeping, first unauthorised absence or a failure to follow reasonable instructions. There are a number of other situations where minor misconduct could be identified, but the impact of the alleged misconduct will factor into how serious the Council considers it to be. It is likely that if there is no to little harm caused by the alleged misconduct, the allegation would be one of misconduct and informal resolution would be explored initially, before moving forward with the formal part of the Policy and Procedure.
- 4.3 Where the impact/harm to the Council or its' employees or agents, or the public is more serious, but the alleged misconduct does not warrant considering dismissal, this type of conduct is likely to be considered serious misconduct, which could lead to a final written warning (even in the absence of prior warnings).

- 4.4 Gross misconduct, is alleged misconduct which is so serious that dismissal is a likely outcome if, following the disciplinary hearing, the disciplinary hearing manager forms a reasonable belief that the employee has committed the act. Examples likely to be deemed gross misconduct include theft, physical violence, bullying and harassment, gross negligence or serious insubordination.
- 4.5 Concerns with under performance or a failure to meet the required performance standards will typically be dealt with via the Performance Improvement Policy. However, any issues of sub-standard performance that result from *deliberate* misconduct or gross negligence, will be dealt with using the Disciplinary Policy and Procedure.
- 4.5 During the course of a disciplinary an employee will always be aware of the circumstances being investigated, and subsequently prior to a disciplinary hearing what the allegations are against them, how serious those allegations are considered to be i.e. misconduct or gross misconduct, and what the potential outcome of a disciplinary hearing could be. It is important to be aware that live warnings have cumulative effect, and therefore multiple warnings for misconduct can ultimately add up to dismissal with notice. Upholding an allegation of gross misconduct could lead to summary dismissal i.e., immediate dismissal without notice.

5. Conduct Outside of Work/Criminal Activity

- 5.1 The Council respects that all employees are entitled to have a private and personal life outside of work and where issues arise in an employee's private life which are not relevant to the workplace, they will not be investigated or explored by the Council. However, where such conduct outside of the workplace undermines an employee's ability to perform their role, may bring the Council into disrepute, or there is a connection between such external conduct and the workplace, the Council will deal with such conduct via this Policy and Procedure. Please refer to Section 3.3 of the Code of Conduct for further details around conduct outside of the workplace.
- 5.2 Similarly, where an employee is the subject of criminal proceedings, the Council will be required to assess whether or not this is relevant to the workplace. This will of course be very fact sensitive, and the Council will carefully consider its course of action. Where an employee is unable to fulfil their contract of employment due to criminal charges, the Council will consider whether the employee is able to continue in the role in accordance with their contract of employment.

6. Suspension

- 6.1 In some cases, suspension from duties may be necessary. This could be due to the severity of the allegations, the breakdown in relationships, to protect the integrity of an investigation, or if there is a risk to other people or Council property. Prior to suspending an employee, alternatives to suspension will be considered such as amended duties or working from a different location.
- 6.2 Suspension is not a presumption of guilt, and it is not a disciplinary sanction. Suspension is a neutral act designed to protect the Council and the employee; it allows for a thorough investigation to take place, and the Council takes its responsibilities regarding suspension very seriously. Only the Chief Executive and Chief Officers have the authority to approve suspension.
- 6.3 Prior to suspension, the employee will be made aware of the suspension verbally. This will be followed up with a letter confirming the terms of the suspension and any associated expectations of the employee. It will cover:
- ❑ The details of the allegation(s);

- Who the employee is able to contact within the Council (including their nominated person);
- That the employee will be expected *not* to attend premises without permission;
- Details of the investigation;
- Pay confirmation;
- The expected length of suspension;
- The expectations around employee conduct i.e. to keep the matter confidential
- The support that is available to them during the suspension.

6.4 It is the Council's objective to limit the amount of time an employee spends on suspension. If there are any delays in the investigation, the employee will be promptly notified and kept updated. The suspension will be kept under continuous review. If, as the investigation progresses, it becomes clear that suspension is no longer necessary, it will be discontinued as soon as possible.

7. Disciplinary Procedure

Informal Procedure

7.1 There will be occasions when conduct falls short of expectation but is not serious enough to warrant formal disciplinary action. Where there is a minor conduct issue (which has not previously been addressed) with the employee, the matter should be dealt with promptly and informally. The manager will seek to understand why this has happened, provide an explanation for why the conduct was not acceptable and set the appropriate standard moving forward. Despite this being an informal conversation, this will be followed up with a letter (file note) to confirm that any further instances may lead to formal action.

Formal Procedure

7.2 When a line manager learns of potential misconduct, they should discuss the circumstances with the employee and engage their HR Business Partner/Advisor. If following this, the line manager is satisfied that allegations are sufficiently serious and cannot be managed informally, then a formal investigation should be carried out straight away. HR will be available as a liaison and as advisory support throughout the formal process.

Fact-Finding Investigation

7.3 A Commissioning Officer (Chief Officer or Head of Service), in conjunction with HR will appoint the Investigating Officer.

7.4 The Commissioning Officer will define the scope of the investigation based on the suspected misconduct. It is the purpose of the fact-finding investigation and therefore the responsibility of the Investigating Officer to carry out a reasonable investigation which is fair and impartial, and to find as much evidence which either supports or does not support the suspected misconduct.

7.5 Once the decision has been made to undertake a fact-finding investigation, the Investigating Officer shall advise the employee in writing of:

- the details of the matter under investigation (and make clear that the disciplinary investigation will cover the initial matter, plus any other issues or breaches of policies which are revealed as a result of the investigation);
- the date, time and place of the investigation (and the date of the meeting will be no sooner than five working days' after the invite has been sent);
- their right to be accompanied to the meeting by a colleague or a trade union official.

7.6 A member of the HR Team, may be present at the interview with the employee to take a record of the conversation. The notes of the meeting will be made available as soon as possible thereafter.

- 7.7 Whilst it is necessary for a thorough investigation to take place, it is also important that the investigation is carried out in a reasonable timeframe. Should the Investigating Officer envisage an investigation that is likely to take longer than 20 working days, they should inform the Commissioning Officer and the employee whose conduct is the subject of the investigation will be updated.
- 7.8 The Investigating Officer shall be entitled to interview such witnesses and carry out such enquiries as they deem necessary. This may include examining the Council's email, internet and other IT systems (including the user accounts of any employee under investigation).
- 7.9 All other witnesses will be met with informally, and their statements taken as soon as possible thereafter. Again, HR may be present to take a note of those conversations and they will follow up with each of the witnesses with their statements to check for accuracy.
- 7.10 It is not the role of the Investigating Officer to determine if there is a case to answer, but to compile an investigation report which, alongside all of the evidence will be reviewed by the Commissioning Officer. It will be for the Commissioning Officer to decide on the basis of the investigation report, whether there is a disciplinary case to answer.

Disciplinary Hearing

- 7.11 Following a fact-finding investigation, if it is considered by the Commissioning Officer, that there are grounds for disciplinary action, the employee will be required to attend a disciplinary hearing.
- 7.12 In cases of misconduct, the Chief Officer may delegate authority and appoint a suitable senior manager as the Disciplinary Hearing Manager to make decisions falling short of dismissal. However, for cases of gross misconduct, the Commissioning Chief Officer or another Chief Officer will be the Disciplinary Hearing Manager and only they will have the authority to dismiss an employee.
- 7.13 The hearing will be held as soon as reasonably practicable, but the employee will be given notice in writing at least 5 working days prior to the hearing of:
- The date, time and place of the hearing;
 - The allegations against them;
 - The basis for those allegations and what the likely range of consequences will be if the Disciplinary Hearing Officer holds a reasonable belief in and upholds the allegations; and
 - Their right to be accompanied.

They will also be provided with a copy of the investigation report and copies of all evidence which has been considered during the fact-finding investigation, including witness statements taken from colleagues or third parties. Should the employee have any evidence they want to be taken into account, this should be sent to the Disciplinary Hearing Manager as soon as possible and no later than 2 working days before the hearing. It is the expectation that any relevant witnesses will have been identified by the employee at the investigation stage, but any evidence to be considered in mitigation will be reviewed by the Disciplinary Hearing Manager.

- 7.14 HR will be present to take a record of the hearing, and this will be made available to the employee as soon as possible once the hearing has closed.
- 7.15 The purpose of the disciplinary hearing is for the Disciplinary Hearing Manager to decide whether or not they have formed a reasonable belief in any of the allegations which have been put to the employee. The Investigating Officer will be present to present the findings of the investigation report, and the Disciplinary Hearing Manager will ask specific questions of the employee and provide the employee and/or their companion with the right to respond, and to sum up their case. The Disciplinary Hearing Manager will be keen to understand any mitigating factors, so it will be important for the employee to tell the Disciplinary Hearing Manager anything they wish for them to take into account.

- 7.16 In exceptional circumstances, if the employee has not previously identified a witness at the investigation stage, and they have not provided a written witness statement from them ahead of the hearing, a request for a witness to be present in the hearing will be considered by the Disciplinary Hearing Manager. It is however the expectation that witnesses will be identified earlier in the disciplinary process so that all interviews take place *before* a decision is made to proceed with a formal disciplinary hearing.
- 7.17 The Disciplinary Hearing Manager will adjourn the hearing and take some time to consider whether or not they have formed a reasonable belief in any of the allegations. They will accordingly consider what the appropriate disciplinary sanction will be in the circumstances reflecting on the allegations and the prior disciplinary record of the employee. If it is possible to communicate the outcome the same day, the hearing will be reconvened, otherwise if the Disciplinary Hearing Manager considers there is not enough time left in the day to make a decision, to agree a follow-up hearing to deliver the outcome verbally. In exceptional cases, it may be necessary for the Disciplinary Hearing manager to communicate the outcome in writing, but this will be discussed with the employee prior to the Hearing being adjourned.
- 7.18 An outcome letter will be prepared and sent to the employee as soon as possible after the hearing. It will detail the rationale for the Disciplinary Hearing Manager's decision, and where the outcome is a formal disciplinary sanction, the employee will be afforded the right of appeal.
- 7.19 Please see here for further information on the LCC Appeals Policy.
- 7.20 If an employee fails to attend or is unable to attend (or their chosen companion is unable to attend) a Disciplinary Hearing on one occasion, the Hearing will be rescheduled for a date no later than five working days later. If the employee is unable or unwilling to attend the re-scheduled Hearing, the Disciplinary Hearing Officer will make a decision on the facts available to them at the time.

8. Disciplinary Sanctions

- 8.1 For matters of minor misconduct, it is expected that a line manager will deal with this promptly and informally. If it is determined that formal action is necessary, the possible formal sanctions which will in the majority of cases remain live for a period of 12 months could be:
- A formal verbal warning (likely only to be applicable for a first-time incident);
 - A written warning (likely to be applicable if there is a live formal verbal warning, or for a more serious first-time incident);
 - A final written warning (likely to be applicable during the life of a formal written warning, or for a very serious first-time incident);
 - Suggesting* demotion/redeployment (likely only to be suitable as an alternative to dismissal, with the employee's agreement and will likely be accompanied by a final written warning);
 - Dismissal (which can either be as a result of cumulative warnings which would be accompanied by contractual notice, or could be summary dismissal i.e., without notice for acts of gross misconduct);
 - Loss of increment (this sanction is available to managers in conjunction with disciplinary sanctions at any of the above levels.)
- 8.2 For matters of gross misconduct, dismissal could be an outcome. LCC are committed to exploring alternatives to dismissal and will take mitigation seriously. Dismissal will be a last resort, and in all cases, due regard will be given to alternatives such as implementing sanctions for longer than 12 months, redeployment and/or demotion.

9. When will this policy be reviewed?

- 9.1 This policy will be reviewed every year or earlier in the event of changes in legislation.

Document Control:

Version no.	Effective Date	Reason	Review due
1.0	31.05.2005	Revisions agreed by Personnel Committee	
2.0	25.06.2013	Revisions agreed by Personnel Committee	
3.0	02.10.2018	Revisions agreed by Personnel Committee	
4.0	15.10.2019	Revisions agreed by Personnel Committee	
5.0	TBC		

FAQs

I have been asked to give a witness statement, can I remain anonymous if I do?

It is important that an employee who is the subject of a disciplinary investigation and/or procedure knows the case against them, and they have a proper and adequate opportunity to challenge the evidence against them. More often than not, that will mean that anonymising witness statements will not be possible. However, there will be some exceptional circumstances (particularly if a witness feels threatened) when the identity of a witness will not be shared with the employee. The HR team and/or the disciplinary investigation officer/disciplinary hearing manager will be transparent about whether or not this will be possible as soon as the issue is raised.

I am going through the disciplinary process, but I have raised a grievance, what happens then?

Each case will be different, but if the grievance is about going through the disciplinary process, then the disciplinary hearing would be considered the most appropriate forum to raise those issues. However, if the grievance is unrelated to the disciplinary, HR will give thought to whether the two processes can run alongside each other in tandem, or whether one of the processes needs to be suspended whilst the other is finalised. This will be communicated clearly to you from the outset.

I am going through the disciplinary process, who can I speak to about it?

The disciplinary process is confidential from the beginning of the investigation and remains so even after the outcome has been communicated. LCC takes its obligations in that respect incredibly seriously and will only share anything related to the process on a need-to-know basis. It is expected that employees only discuss the matter with HR, immediate family, and anybody that owes them a duty of confidentiality (such as a doctor, or a counsellor etc.)