



## **EAST LINDSEY DISTRICT COUNCIL**

### **DISCIPLINARY PROCEDURE**

The policy has been audited against: -

- Policies from other local authorities
- Policies from Private Sector organisations
- National on line HR information services
- ACAS Advisory Handbook – Discipline & Grievance at Work
- ACAS Code of Practice 1 – Disciplinary & Grievance Procedures
- Guidance from the CIPD

#### **Introduction**

This document sets out the formal Disciplinary Procedures as agreed between East Lindsey District Council, UNISON and GMB and applies to all employees of East Lindsey District Council. The purpose of this procedure is to provide a clear and transparent process to deal fairly and equitably with any shortfalls in conduct or behaviour.

Disciplinary action will only be considered if the procedures contained in this document have been followed. The procedure deals with formal disciplinary action only. Other types of informal warnings, either verbal or written, as part of the control exercised by managers are not subject to the formal procedures contained in this document. Occasionally managers will have to deal informally with issues of conduct, or behaviour. In such cases any action taken, e.g. an informal warning, will not form part of the formal procedures contained in this document.

The purpose of the procedure is to ensure when standards of conduct or behaviour fall below the required level, they are addressed in a fair and consistent manner. The procedure is not just to impose sanctions but is a way of encouraging improvement.

Examples of issues, which will be dealt with as disciplinary matters include:

- Unauthorised absence
- Abuse of sickness leave
- Failure to follow ELDC's policies or procedures
- Non compliance of a reasonable instruction
- Misuse of email or internet
- Breach of the Code of Conduct

Some issues are considered so serious that they constitute gross misconduct for which employees will be liable to summary dismissal without notice or payment in lieu of notice, examples of these are:

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- Theft, fraud or deliberate falsification of records
- Racism/sexism
- Physical violence, actual or threatened, against or in the vicinity of another person
- Infringement of health and safety rules
- Incapability whilst on duty brought on by alcohol or illegal/non-prescribed drugs
- IT crimes

These lists are not exclusive or exhaustive.

Absence through disability will not normally be considered a disciplinary issue. Such problems shall be considered compassionately by the Council subject to, if appropriate, the Disability Discrimination Act. 1995. Continuous short-term absences may be dealt with through the Disciplinary procedure, subject to the correct procedures being followed under the Sickness and Absence Management Policy. In the case of work performance when the employee lacks the appropriate level of skill to perform their job to the required standard, this will be treated as a capability issue and dealt with under the Capability Procedure.

Managers who disregard these procedures or attempt to shortcut them may find themselves subject to disciplinary investigations.

Disciplinary procedures will not automatically be applied if an employee is subject to criminal charges or convictions. The Council will investigate the facts as far as possible and consider whether the conduct is sufficiently serious to warrant instituting the disciplinary procedure.

Disciplinary procedures will not be instigated against a trade union steward/representative until the circumstances have been discussed with the full time official: with the exception of suspending the employee in the case of suspected gross misconduct.

### **Informal Action**

In the event of an apparent minor breach of rules or appropriate standards of behaviour or conduct, informal action may be a more appropriate method of bringing about change. In such cases the immediate line manager will arrange an informal meeting with the employee concerned. The line manager will present the alleged facts of the situation to the employee and express his/her concerns. The employee must be given a full opportunity to respond and explain the reason for his/her conduct or behaviour.

At the conclusion of the interview, the manager should make a brief note with both parties agreeing and signing that the content as a true record. This will ensure both parties are clear of the issues, future expectations, any agreed action plan and the possible implications should these not be met.

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## **Formal Discipline**

The Council has produced Policy Statements, Codes of Practice and Procedure documents, Rules and Guidelines covering many topics such as victimisation, harassment or bullying at work, health and safety; use of Council property; working procedures; smoking; flexitime; confidentiality and many more. A full list is located on the intranet (via a hyperlink) and also may be obtained from the HR department, (Compass Point Business Services).

All Council employees are provided with information setting out rules and conduct issues when they are first employed by the Council; such policies and procedures are accessible via the ELDC intranet or available in a hard copy format direct from HR (CPBS). Such documents are the primary means by which the Council informs its employees how it expects them to conduct themselves when carrying out their duties.

Any employee conducting themselves in breach of the Council's published policies and procedures may be subjected to formal disciplinary action. Minor incidents may be addressed informally (see para. 2 above) but persistent, minor breaches (where informal measures have not resulted in any improvement or sufficient improvement) may be subject to formal disciplinary action. A full investigation will be undertaken before any disciplinary action is taken.

## **Responsibility for Disciplinary Matters**

Each Strategic Development Manager and their Team Leaders are responsible for the discipline within their own departments. It is their responsibility to ensure all employees understand the policy statements etc. adopted by the Council.

Formal responsibility for chairing a disciplinary hearing may be delegated by the Strategic Development Manager to a designated officer who should normally be a Service Team Leader. Delegations below Team Leader can be made but should be exceptional.

Any formal sanctions awarded at a disciplinary hearing will be confirmed in writing by the Chair of the hearing.

If a Strategic Development Manager or Team Leader is involved with a disciplinary investigation another Strategic Development Manager or Team Leader will chair any subsequent disciplinary hearing.

## **Procedure for Investigating Disciplinary Issues**

During the investigation stage the Strategic Development Manager or Team Leader shall inform the employee if they are to be temporarily suspended for a specified period on full pay and explain why this is

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considered necessary. For example, it may be necessary to enable accurate and necessary information to be gathered.

Temporary suspension shall automatically take place for allegations of gross misconduct to avoid the employee or the Council's position being compromised. However, such temporary suspension does not in any way constitute disciplinary action, penalty or sanction, nor does it prejudice the employee's case.

Where there appears to be serious misconduct or risk to other people or property, the Council may consider a period of suspension with pay while the case is being investigated. Suspension is a neutral act and does not presume guilt or serve as a disciplinary sanction. Any suspension will be reviewed by the Strategic Development Manager or Team Leader on a fortnightly basis and the decision communicated to the employee.

A Strategic Development Manager or Team Leader will appoint an officer to conduct an investigation and collect information / statements relevant to the allegations made. The officer appointed must not have been involved in the matter being investigated.

The investigation of any potential disciplinary matter is extremely important and confidential. It is critical that the proper investigatory steps are taken.

- a) Where an allegation is made the line manager will normally be the investigating officer and undertake initial enquiries to establish if there is any substance to the allegation;
- b) If it is the manager making an allegation the next tier of management or another person appointed by the Strategic Development Manager or Team Leader will undertake the initial enquiry;
- c) At this initial stage the employee must be informed of the allegation, in writing, and a response received from the employee. The employee must be informed such an initial enquiry does not constitute any form of disciplinary action;
- d) Depending on the allegation it may be appropriate to take witness statements and these will be taken from all available witnesses;
- e) At the conclusion of the enquiry the Strategic Development Manager/Team Leader (or designated officer) should be presented with the findings to determine the appropriate action (if any). The enquiry should normally be completed within 28 days from the date of the first contact with the employee. The options available are:
  - The allegation is dismissed
  - Further investigations should be made and completed within 10 working days

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- The matter be subject to informal discussions outside the remit of this procedure
- A formal disciplinary hearing is convened

The employee will be notified in writing of the outcome of any investigation by their line manager. If it is decided that the allegation is serious and that a disciplinary hearing is required, the employee will receive written notification of the date of the hearing together with those attending, the right to be accompanied, full details of the allegations made and copies of all documentation gathered by the Investigating Officer. Witness statements will only be anonymous where the witness' safety may be threatened if their identity is revealed.

The employee has a right to be accompanied at the hearing by their trade union representative or colleague. If the chosen representative is not available, the employee can propose an alternative date within 5 working days of the date of the proposed hearing date.

The Strategic Development Manager/Team Leader shall arrange a hearing date convenient to themselves and the employee taking into account the availability of the employee's chosen representative and any key witnesses. The employee should be given a minimum of **5 working days notice** of any hearing. If the employee, or Council, wishes to question any witness statement at least 2 working days notice should be given by either party. Witnesses making a statement should be available for questions to be asked if requested by either party.

Depending on the complexity of the allegations, and the available information prior to the hearing, the Strategic Development Manager/Team Leader (or designated officer) will confirm who is to chair the hearing and indicate if dismissal is a potential outcome if the allegation(s) is found to be proven without any mitigating circumstances.

The employee will be informed of their right to present any evidence / documentation to challenge the allegation against them. The employee and their chosen representative will be given reasonable opportunity to carry out their own investigations, to make a case in defence. Any further written submission(s) by the employee must normally be provided to the person chairing the hearing at least 2 working days prior to the hearing.

If an employee is absent from work due to sickness when they are first informed of the allegations against them or during the investigation disciplinary investigation will continue, as far as possible, in the absence of the employee.

The Strategic Development Manager/Team Leader may either cancel the disciplinary hearing, or postpone it to a later date, if after receiving a further submission from the employee it is clear a disciplinary hearing is inappropriate or further investigations are required. In these circumstances the position will be clarified, in writing, to the employee.

### **Hearing Procedure/ Conduct**

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The Strategic Development Manager/Team Leader (or nominated officer) shall preside over the hearing as Chair. A HR Business Partner, (Compass Point Business Services Ltd) will accompany the Chair to the hearing and operate in an advisory role. The procedure to be adopted is as follows:

- Introduction by the Chair to explain the procedure
- If employee not represented to remind the employee of that right.
- If employee wishes to be represented the Chair can consider adjourning the hearing
- The investigating officer presents the allegation(s) and the facts gathered and produce witnesses if appropriate
- The Chair and Advisor can ask questions or seek clarification of the investigating officer or any witnesses.
- The employee and/or representative can ask questions, or seek clarification, of the investigating officer or any witnesses
- The employee and/or representative presents their case in defence (or to accept the allegation) and produces any witnesses
- The Chair and Advisor can ask questions or seek clarification of the employee or any witnesses
- The investigating officer can ask questions, or seek clarification, from the employee or representative or any witnesses
- If new / fresh information is introduced, by either party, an adjournment can be requested for the information to be considered. The party calling the adjournment should indicate the timescale required for the adjournment. Adjournments will be granted at the sole discretion of the Chair. Both parties will be asked to sum up at the conclusion of the evidence. At the conclusion of the hearing both parties leave the hearing and the Chair will reach a decision, based on the information available and on the balance of probabilities.
- Both parties are recalled and informed of the decision and if the allegation is proven the employee and/or representative is asked to submit any mitigating circumstances.
- Both parties leave the hearing and the chair considers any mitigating circumstances and makes a decision based on the information available, any mitigating circumstances and on the balance of probabilities
- Both parties are recalled and informed of the decision made and the right of appeal.
- The decision will be conveyed in writing to the employee in 3 working days.

### **Disciplinary Sanctions**

No formal disciplinary sanction will be made without a disciplinary hearing.

Depending on the seriousness of the allegation, there are five levels of formal disciplinary sanctions, which may be taken:

### **Oral Warning**

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An Oral Warning will be issued where the conduct of the employee has fallen below acceptable standards, and informal guidance has not resulted in sufficient improvement, or, where the offence justifies an immediate formal sanction.

An Oral Warning should be recorded on an employee's personal file and will normally be disregarded for disciplinary purposes after 6 months.

### **Written Warning**

A Written Warning will be issued where the conduct of the employee continues to be significantly below acceptable standards and the first verbal warning has not resulted in sufficient improvement or where the offence justifies a warning at this level.

A Written Warning will be recorded on an employee's personal file and will normally be disregarded for disciplinary purposes after 12 months.

### **Final Written Warning**

The Final Written Warning will be issued where the conduct of the employee continues to be significantly below acceptable standards, and previous warning(s) have not resulted in sufficient improvement, or where the offence is so serious that a first and final warning is appropriate, or where dismissal was a clear possibility, but significant mitigating circumstances were accepted.

A Final Written Warning will be recorded on an employee's personal file and will normally be disregarded for disciplinary purposes after 12 months.

### **Dismissal or other sanction**

#### **Action Short of Dismissal**

Where appropriate, the Chair may consider alternative actions to dismissal. Such sanctions may include:

- Transfer to a role in a different area of the Council
- Transfer to a role with different responsibilities
- Demotion

#### **Dismissal with notice**

Where the conduct of the employee continues to be significantly below acceptable standards and all previous warnings, support, advice and guidance have not resulted in sufficient improvement, dismissal after due notice will normally result.

Note: An employee will not normally be dismissed for a first breach of discipline, except in the case of gross misconduct, when the outcome will

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normally be dismissal without notice or payment in lieu of notice. (See Summary Dismissal below.)

### **Summary dismissal**

This is dismissal without notice or pay in lieu of notice, as a result of gross misconduct. It will only be applied where the employee's conduct strikes at the heart of the employment contract, and the Council is therefore justified in no longer tolerating the employee's presence at work.

### **The Right to Appeal**

Any employee receiving a warning as part of the disciplinary procedure may appeal against the sanction. The Appeal will be to the Deputy Chief Executive, except in the case of dismissal where the appeal will be to the Council's Employment Committee.

Any appeal must be made in writing **within 5 working days of receiving the letter** confirming the outcome of the disciplinary hearing (or 10 days in the case of dismissal). The letter must state the reasons for appeal, e.g. unfairness of judgement by the officer, severity of sanction, or disregard of key information.

A hearing will be arranged not later than **28 working days** from the date that the appeal is submitted, or within a longer period if agreed by the employer. The hearing will consider the grounds of the appeal and may decide to withdraw or vary the disciplinary sanction awarded.

Any internal appeal, against dismissal, does not affect an employee's statutory right to make an application to an Employment Tribunal.

### **The Appeal Hearing**

The appeal hearing will follow the hearing protocol contained in this disciplinary procedure.

The outcome of the appeal hearing will be confirmed in writing **within 5 working days** of the hearing together with the fact that there is no further means of appeal.

The decision made at the appeal hearing will be final.

### **Amendment to Procedure**

These procedures will be reviewed every two years to ensure their relevance to current legislation and practices within the Council.