

DISCIPLINARY PROCEDURE

This document applies to all Council employees except:

- All school based employees
- Chief Executive
- Chief Officers

This document may not be applicable to employees who transferred into LCC under TUPE legislation and remain on the terms and conditions of their previous organisation.

Last Review	December 2017
Next Scheduled Review	January 2020
Last Updated	August 2018

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DISCIPLINARY PROCEDURE

MINOR CONDUCT ISSUES – INFORMAL STAGE (INCLUDING PRELIMINARY INVESTIGATIONS)

On becoming aware of an employee's alleged misconduct, management (normally the line manager) will undertake, where practicable, immediate preliminary investigations about the issues of concerns or allegations made. This will normally involve a private discussion with the employee to establish if there is an acceptable explanation for the alleged misconduct. It is not usual for employees to be accompanied at this meeting. However, they may be if both the manager and the employee consider it appropriate.

The manager should:

- Present the details of the alleged misconduct to the employee.
- Give the employee a full opportunity to respond and explain any factors that may be affecting their conduct (if any underlying medical issues are suggested, it may be appropriate to refer the employee to Occupational Health for advice).
- Give thorough consideration to all the employee's responses and decide what action is required. It may become apparent during the discussion that the problem is not a disciplinary matter and that other procedures, e.g. those relating to capability or reasonable adjustment, may be more appropriate.

NB: In certain cases (e.g. where current and ongoing fraud is suspected) it may be appropriate not to inform the employee at this stage in order to allow necessary observations and collection of evidence to take place. Under statutory provisions, covert surveillance may be conducted though this will require the approval of designated senior officers in accordance with the Council's policy. Advice must be sought from Legal Services, People Management and/or the Counter Fraud and Investigations Team (CFIT), before any covert surveillance takes place.

A manager will need to determine if an issue can be resolved informally. This will depend upon factors such as the seriousness of the complaint/allegation and the impact on others, e.g. service users, clients, other employees and the public. The manager should consider whether informal action could quickly and easily be taken to resolve the matter and should make every effort to resolve the matter in this way, immediately, wherever possible.

NB: Any case concerning an employee's conduct in respect of a child or vulnerable adult, where the Safeguarding process is applied, and any case of fraud or theft, will be deemed a major issue and dealt with by formal investigation.

Notes will be taken of the manager's conversation with the employee and, except in the most minor cases, the outcome of the meeting, including any remedial action, will be recorded using the [Record of Actions \(ROA\) Form](#).

Notes of discussions on minor conduct issues will normally incorporate:

- A clear statement of what was discussed with regard to the employee's conduct and an explanation of why this is unsatisfactory.
- The required level of improvement discussed and (wherever practicable) agreed with the employee. These should be in measurable terms such as quantity, quality, frequency, timing, etc.
- How management will assist the employee (if applicable) to meet the required standards.

This record is not a formal warning, which will be made clear, and should be phrased in a constructive and helpful manner.

A copy of the [ROA](#) will be given to the employee and a copy placed on the employee's supervision file. If supervision files are not used, it will be placed in a confidential and secure location within the department. It will not be placed on the employee's personal file.

Employees, who disagree with the content of the [ROA](#), have the right to ask for their written comments to be added.

The manager should remove the ROA from such files 6 months from the last action/entry as stipulated in section SC015 of the [LCC Retention and Disposal Schedule Guidance](#).

Where an employee admits to an allegation at an informal stage and the manager feels that the allegation is serious enough to warrant formal disciplinary consideration, the manager and employee will make and sign a written record of this. The manager will ensure the employee appreciates the implications of the admission, i.e. that the matter will be fully investigated and may be considered at a formal Disciplinary Hearing.

MAJOR CONDUCT ISSUES – FORMAL STAGE

If the manager determines that the matter cannot be dealt with by informal action, they will with advice from HR, determine whether a Strategy Meeting should be held and how the investigation should progress.

NB: A Strategy Meeting will normally only be required where the issue:

- Involves a complex safeguarding issue (see [Safeguarding Concerns section](#), below)
- Is complex, sensitive, involves potential criminal activity, and/or includes multiple people or counter allegations
- Is fraud or theft, including misuse of Council property

The above list is not exhaustive and HR advice should be sought for all cases

If a Strategy Meeting is not required, the manager will need to decide whether the employee remains in the workplace (see [Management Guidance on Suspension from Work](#) and template [Letter 1 Suspension Notification](#)) and if the investigation needs to be management, Corporate Audit (CFIT) led or, exceptionally, undertaken by an external Investigator. A risk assessment and communication plan should also be completed where considered necessary.

If a Strategy Meeting is required, it will normally be arranged by the manager (or by the HR Adviser if agreed).

The Strategy Meeting will normally involve the relevant manager (Lead Manager), a HR Adviser (and a representative from CFIT if required). Dependent upon the nature of the allegation(s) there may be a need for other professionals to attend also; especially if there are other investigations taking place into the allegation(s).

Other possible attendees include:

- Member of the Safeguarding Vulnerable Adults Team
- Local Authority Designated Officer (LADO)
- CfBT School Improvement Service (SIP or Principal Advisor)
- Representative from Legal Services

NB: The above list is not exhaustive

In normal circumstance a Strategy Meeting will take place before any decision is made regarding the alleged concerns. However, in certain circumstances, decisions (for example regarding suspension) need to be taken quickly and the employee(s) concerned may already be suspended from work or temporarily transferred to another section/work base, before the Strategy Meeting is held.

In these circumstances reference should have been made to the [Management Guidance on Suspension from Work](#) and template [Letter 1 Suspension Notification](#) and the Strategy Meeting should be arranged at the first available opportunity; normally no later than 5 working days after the suspension or temporary transfer.

The purpose of the Strategy Meeting is to:

- decide on whether the investigation is to be a management, CFIT or, exceptionally, external Investigator led (allegations involving fraud and theft will normally be investigated by CFIT)
- clarify the allegations/objectives of the investigation and draft the [Investigation Brief](#)
- consider whether suspension or temporary transfer are necessary (or should be continued if already suspended/temporarily transferred)
- complete a [risk assessment](#) (see [Management Guidance on Suspension from Work](#))
- agree a [communication plan](#) (see [Protocol for Dealing with the Media](#))
- determine support arrangements (for the employee(s) concerned, and possibly the complainant(s) and witnesses) (see [Guidance on the Role of the Support Officer](#))
- set dates for any Strategy Review Meetings or preferred update mechanism

- agree sharing of investigation interviews where multiple investigations are taking place

The [Strategy Meeting Checklist](#) should be used to assist with the above.

It is the Lead Manager's responsibility to email the completed documents to all attendees following the Strategy Meeting and attendees should raise any matters of accuracy as soon as possible. The HR Adviser will finalise the [Investigation Brief](#), following the Strategy Meeting, and agree this with the Lead Manager before the investigation begins.

The decision to suspend or take any other appropriate action, such as temporary transfer, need not be made at this meeting as this may need to be taken by a more senior officer than those present. However, a deadline for making such a decision should be set and the decision maker should feedback to attendees as soon as possible (see [Management Guidance on Suspension from Work](#)).

SAFEGUARDING CONCERNS

Where the matter concerns a safeguarding issue, i.e. there is a concern regarding the conduct of an employee in respect of a child or a vulnerable adult, the manager must ensure that the Safeguarding Vulnerable Adults Team or the Local Authority Designated Officer (LADO) are made aware, if they are not already aware by other means.

Where the Safeguarding process is applied a safeguarding meeting will be arranged. The initial safeguarding meeting should include the HR Adviser and where appropriate a representative from CFIT. This is necessary to ensure any safeguarding and employment investigations run at the same time or jointly, where possible and appropriate.

Employment investigations need not wait until after the resolution of any safeguarding concerns (unless there are on-going police enquiries in which case HR will advise when the investigation should commence).

If the concern is a safeguarding matter the HR Adviser and Lead Manager will call a Strategy Meeting as soon as practicable, following the safeguarding meeting, to consider the employment implications. However, it may be possible to consider the employment issues at the safeguarding meeting as all the necessary participants should be in attendance.

Any proposed actions relating to the employee (i.e. suspension or temporary transfer and notification of investigation) will be dependent upon the actions of the relevant Safeguarding Team. Safeguarding actions must take priority until risks are satisfactorily managed.

ALLEGED CRIMINAL ACTIVITY

An employment investigation may run in parallel to a police, audit and/or child protection or adult abuse investigation, and should not be held up by any such investigations unless considered prejudicial to those investigations to proceed. It is not always necessary to await the outcome of any court hearing before deciding on disciplinary action.

An employee who provides information on criminal acts, breaches of legal obligations, health and safety dangers, environmental risks and related cover ups will have the right not to be dismissed or victimised for speaking out on such malpractice. For further information see the Council's Confidential Reporting Code.

INVESTIGATION PROCEDURE

The purpose of the employment investigation is to determine all the relevant facts associated with the allegations and establish whether there is a case to answer.

Dependent on the case, the investigation may be led by management, a representative from CFIT or, exceptionally, an external Investigator. This will normally be decided at the Strategy Meeting.

Whilst this is a formal process, in order to minimise unnecessary formality and apprehension, the electronic, audio or video recording, by any device, of meetings and/or hearings will not be permitted. If you think that there are exceptional circumstances where this should be allowed (for instance, due to a disability) you should raise this in advance with the person due to conduct the meeting, the chair of the hearing or the relevant HR Adviser. Due consideration will then be given to the request and you will be advised of the outcome of that consideration.

Where the nominated note taker at meetings and/or hearings associated with the process feels it is necessary to make an audio recording in order to support with the preparation of the notes, the requirement to make the recording will be clarified with all present at the start of the meeting.

Normally within 24 hours of the Strategy Meeting (or decision to investigate) the employee concerned will be notified of the way forward (face to face meeting or letter as appropriate) and the investigation will be formally commissioned. The HR Adviser will draft a letter based on template [Letter 2 Investigation Notification](#) to notify the employee of the employment investigation; unless the employee has already been notified by a Senior Manager if a decision has been taken to suspend them from work.

For further information see [Guidance on Investigations](#).

DISCIPLINARY PROCEDURES AND ABSENCE

Employees subject to the disciplinary procedure, who are absent from work due to sickness, may be referred to Occupational Health for advice on assisting their return to work and/or their participation in the investigation process.

Whilst an employee may feel "stressed" and anxious under such circumstances issues will not be put on hold indefinitely awaiting an employee's return to work.

If sickness or other absence prevents an employee attending a Disciplinary Hearing it may be postponed and re-arranged within 5 days or as soon as practicable.

Employees will be advised at that time that if they fail to attend the re-arranged hearing, then their case and/or representation may be considered by management in their absence, based on the written submissions.

EMPLOYMENT INVESTIGATION OUTCOMES

On completion of the investigation, the investigation report is sent to the Lead Manager and the HR Adviser. A meeting may take place with the HR Adviser, Lead Manager and the Investigator, to help clarify any points of fact or evidence and for the Lead Manager to determine what the next steps will be.

The reason for reaching this decision should be recorded on the [Outcome of Investigation Record Form](#) template and should be made within 5 working days of the completed report.

The employee is notified, in writing, of the investigation outcome by the Lead Manager, using template [Letter 5 Investigation Outcome Notification](#) for guidance.

The following outcomes as a result of a formal employment investigation being undertaken are:

No Further Action

If it is decided the allegations do not justify further action or there is no evidence to substantiate the allegations, the effect on the employee(s) involved, along with other factors, will nevertheless be considered.

This may be particularly the case where an employee has been suspended or temporarily transferred during the investigation. In such instances, arrangements will need to be made for the employee's return to their place of work.

It may be necessary to carefully plan and manage the reintegration of the employee as they may have been away from where they normally work for some time.

It may also be considered appropriate to have the employee transfer, voluntarily, on the same grade, to another section or work base. Any such considerations should be discussed with the employee concerned as a possibility at this time.

Informal Management Action

It may be decided the allegations warrant informal management action. Examples of circumstances where informal management action might be appropriate are:

- Employee is advised of the need to improve a particular skill, e.g. communication style and an action plan can be put in place to support this
- Employee's conduct needs addressing but a formal sanction is considered too severe, e.g. an issue that could be resolved through improved self-awareness.

A record of any informal management action taken will be made using the [Record of Action](#) template, noting that this is not a disciplinary sanction, and held on the employee's supervision file (or other confidential and secure place within the department if supervision files are not held).

The manager should remove the ROA from such files 6 months from the last action/entry as stipulated in section SC015 of the [LCC Retention and Disposal Schedule Guidance](#).

Where it is considered that a formal Disciplinary Hearing is not necessary, the Lead Manager will provide verbal feedback to the employee concerned. In certain

circumstances (for example to protect a witness) some information from the investigation may be withheld and the reason for withholding information should be explained and recorded.

Formal Disciplinary Hearing

Where a formal Disciplinary Hearing is considered appropriate, arrangements for the hearing will be made as soon as is reasonably practicable.

A Disciplinary Panel consisting of two senior managers, with no prior involvement in the case, will hear all the evidence and decide the outcome. This will normally be an Assistant Director, with authority to dismiss (or a Head of Service with delegated authority to dismiss); normally from the service area concerned; and another senior manager, e.g. a Head of Service. It may be considered appropriate to select the second Panel member from another service area.

An HR Adviser, also with no prior involvement in the case will also attend, together with a management representative, the employee, their representative and, normally, the Investigator. Both management and the employee can submit documentation and call and question witnesses.

The HR Adviser will confirm the arrangements to all parties giving at least 10 working days' notice, based on template [Letter 6 Disciplinary Hearing Notification](#).

Any documentation that either management or the employee wishes to be considered at the hearing, must be made available to the HR Adviser no later than 7 working days prior to the hearing to enable (where practicable) distribution of full documentation packs to all parties 5 working days prior to the hearing.

If there is a late submission of evidence it will be for the Chair of the Disciplinary Panel to decide whether or not this will be accepted.

As part of the disciplinary hearing pack the employee subject to the investigation will be given a copy of the investigation report.

In certain circumstances (for example to protect a witness) some information may be withheld and/or redacted in accordance with the [LCC Retention and Disposal Schedule Guidance](#).

Whilst this is a formal process, in order to minimise unnecessary formality and apprehension, the electronic, audio or video recording, by any device, of meetings and/or hearings will not be permitted. If an employee thinks that there are exceptional circumstances where this should be allowed (for instance, due to a disability) they should raise this in advance with the person due to conduct the meeting, the chair of the hearing or the relevant HR Adviser. Due consideration will then be given to the request and the employee will be advised of the outcome of that consideration.

Where the nominated note taker at meetings and/or hearings associated with the process feels it is necessary to make an audio recording in order to support with the preparation of the notes, the requirement to make the recording will be clarified with all present at the start of the meeting.

Further information about a formal hearing can be found in the [Guidance on Conducting a Hearing](#).

DISCIPLINARY HEARING OUTCOMES

The Council's Disciplinary Policy and Procedure allows for the following disciplinary hearing outcomes:

No Further Action

Where it is considered there is no case to answer.

Management Action

Where the alleged offence is proven but a reprimand is considered an appropriate outcome due to mitigating circumstances or the nature of the offence, e.g. a relatively minor issue.

First Written Warning

- Where the employee's conduct has fallen below acceptable standards or,
- Where the offence is sufficiently serious to justify an immediate formal sanction.

NB: The warning will be regarded as live for disciplinary purposes for between 6 to 12 months, as determined at the Disciplinary Hearing.

Final Written Warning

- Where the employee's conduct continues to be significantly below acceptable standards and previous written warning(s) have not resulted in sufficient improvement, or
- Where the offence is so serious that a final warning is appropriate as a first formal warning or
- Where dismissal would normally be appropriate but significant mitigation is accepted by management

NB: The warning will be regarded as live for disciplinary purposes for between 12 to 24 months, as determined at the Disciplinary Hearing.

All warnings will be confirmed in writing and will include:

- A clear statement of the unsatisfactory conduct or behaviour
- The level of the warning
- The length of time it will remain live for disciplinary purposes
- The required level of improvement (in measurable terms)
- The consequences of no improvement in conduct or behaviour
- The right to appeal

NB: The HR Adviser who attended the Disciplinary Hearing will prepare, on behalf of and in the name of the Chair of the Disciplinary Panel, the written confirmation of the hearing outcome, based on template Letter 8 Disciplinary Hearing Outcome Notification . A copy of this outcome warning letter will be placed on the employee's personal file subject to the LCC Retention and Disposal Schedule Guidance . However; it will not normally be regarded for disciplinary purposes beyond the live period determined at the Disciplinary Hearing.

Formal Management Action

The Disciplinary Panel may decide that the circumstances of a particular case are such that, in addition to a warning, management action is also appropriate, e.g. the Panel may identify a need for the employee to undertake refresher training or work under supervision for a period of time.

Withholding of incremental salary progression

In cases in which it is decided that a formal written warning (or dismissal with notice) is the appropriate sanction any pay increment(s) due to the employee concerned (during the live period of the warning or notice period) may be withheld.

Any such increments withheld during the period of a written warning will become payable to the employee following the expiry of the identified live period, subject to the improved conduct of the employee concerned but these will not be backdated.

Transfer

In cases other than dismissal, there may be circumstances where it is jointly agreed that it is not appropriate for the employee to return to their substantive post. In discussion with the employee a voluntary transfer to another post, at the same or a lower grade, in another service area or work base, should be considered.

As this is a voluntary transfer, 'At Risk' status and Salary Protection does not apply.

Any agreement between the employee and management on such a transfer will be confirmed in writing, and will be separate to any disciplinary warning issued.

Dismissal

Dismissal will occur where there has been gross misconduct **OR** where the employee has a warning in force and is deemed appropriate for any further misconduct or unsatisfactory conduct that has taken place.

- **Dismissal with contractual notice** - Unless an employee is dismissed for gross misconduct, they will receive the appropriate period of notice.

NB: If the employee attended the hearing and notice was given verbally the notice period starts the day after the hearing. If the employee did not attend the hearing the notice period starts 2 days after posting the outcome letter.

- **Summary dismissal** - Actions of gross misconduct will, except in the most exceptional circumstances, justify dismissal without notice.

NB: All dismissal notices will be in writing and will identify the reason(s) for the dismissal, the date on which the employment will terminate and the employee's right of appeal (template [Letter 8 Disciplinary Hearing Outcome Notification](#) is available for use).

REFERRALS TO DBS AND OTHER ORGANISATIONS

The Council has a legal duty to refer information to the Disclosure and Barring Service (DBS) where it has removed an individual from working or volunteering or has concerns in respect of an individual's contact with children or vulnerable adults. For further information see the Council's [Policy on the Referral to the DBS](#).

There may also be a need to refer the circumstances of a particular case to other professional bodies, e.g. The Teaching Agency or Health Professions Council.

APPEALS

An employee has the right to appeal against any formal disciplinary action taken against him/her under this procedure. If an employee wishes to appeal the Council's [Appeals Policy](#) must be followed.

RECRUITMENT

Once the decision to dismiss has been made and notice has been issued, the line manager may advertise to recruit to the post, once it has been confirmed by HR that the employee has not submitted a written notification of an appeal against the decision.

APPENDIX 1 EXAMPLES OF MISCONDUCT

The following examples of misconduct are intended to help employees understand the standards required by the Council. The Council's [Code of Conduct](#) (and relevant professional Codes of Conduct) expands further on some of these standards.

Dependent upon the circumstances and seriousness of a particular case the examples below of misconduct may be regarded as gross misconduct. Except in the most exceptional circumstances, gross misconduct will result in summary dismissal, without notice.

This list of examples is illustrative and not exhaustive:

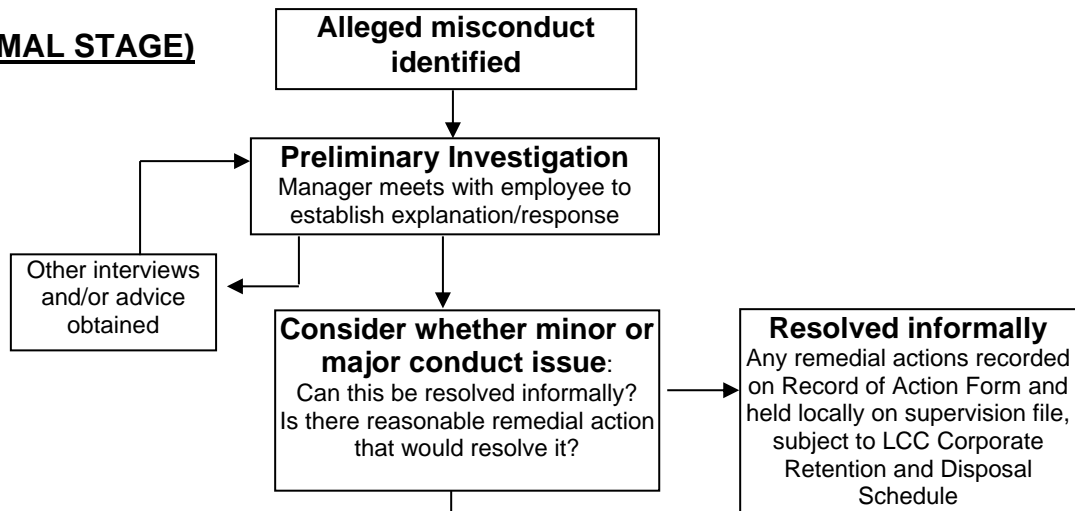
- Deliberate provision of false or misleading information, e.g. on application forms.
- Breaches of the Council's Information Governance Policy.
- Failure to wear or use appropriate equipment/attire made available or necessary for the job (including safety equipment unless exempted on the grounds of religion or belief following a risk assessment).
- Unauthorised absence, poor timekeeping.
- Failure to comply with sickness absence procedures and Absence Management Policy.
- Falsification of official accounts or documents e.g. travel sheets, expense claims.
- Incapacity at work, due to the effects of alcohol or non-prescribed drugs.
- Physical violence, indecent behaviour, action or language that is likely to cause offence, including racial, religious or sexual abuse.
- Harassment, bullying or victimisation of others, including racial, religious or sexual intimidation or prejudice of other employees or members of the public.
- Disruption of others by unruly or disorderly behaviour.
- Discourteous or improper treatment of others, e.g. the public, colleagues, Members, service users, partner organisations.
- Acceptance of bribes or involvement in similar corrupt practice.
- Lack of integrity that may damage public confidence in the Council.
- Unauthorised employment, e.g. engaging in unauthorised employment during hours when contracted to work for the Council, or engaging during off-duty hours in employment considered detrimental to the interests of the Council.
- Political activity whilst occupying a politically restricted post (e.g. acting as a party election agent or sub-agent, failure to give notice of an intention to stand in a parliamentary election).
- Engaging in activities or conduct that may adversely affect recovery from illness.
- Conviction of a criminal offence inconsistent with the position the employee holds.
- Use of Council time/property/equipment for personal reasons without permission.
- Theft of, misuse of, damage to or neglect of property or equipment.
- Failure to report actual or suspected abuse of any service user by another employee or any other person.
- Disregard for the health and safety of others, including reckless driving or operation of vehicles, plant or equipment, and smoking in prohibited areas.
- Failure to follow either operating instructions/procedures or reasonable instructions.
- Failure to achieve required levels and/or quality of performance through carelessness or lack of application (see **NB** below).
- Engaging in activities or conduct that places an individual, e.g. a service user, at risk, including the inappropriate disclosure of confidential information.

NB: As stated in the Disciplinary Policy, the Council accepts that before employees can be expected to reach required standards of conduct and job performance, it is essential they have been provided with appropriate training and appropriate levels of guidance and supervision. The procedures used for dealing with misconduct are different from those used when dealing with work performance and capability. In cases of work performance and capability the Council's [Capability Policy](#) should be used unless the incident itself is so serious as to justify initiating disciplinary procedures.

APPENDIX 2 FLOWCHART

MINOR CONDUCT ISSUES

(INFORMAL STAGE)



MAJOR CONDUCT ISSUES

(FORMAL STAGE)

