

Disciplinary Policy and Procedure

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Purpose

The purpose of the disciplinary policy and procedure is to help and encourage employees to achieve and maintain acceptable standards of conduct.

This policy and procedure has been drafted in line with the ACAS Code of Practice on Disciplinary and Grievance procedures (2009) and adheres to the basic principles of fairness, reasonableness, and transparency.

All employees are expected to comply with the Council's Code of Conduct, the Values and Behaviours and Council policies.

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Scope

This policy applies to all employees of Leicestershire County Council employed under the Conditions of Service for National Joint Council for Local Government Employees including Social Workers who are subject to an [Assessed and Supported Year in Employment](#). It is not applicable to:

- Employees within their probationary period;
- Chief officers (employees on grade 18 and above);
- Casual workers;
- Agency workers;
- Individuals employed by schools and colleges with delegated budgets

Managers and employees are advised to refer to the supporting [Disciplinary Guidance](#) for further information on the application of the policy.

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Procedure

Wherever possible, potential disciplinary issues and minor breaches of discipline will be resolved informally, as part of the day-to-day management of employees. Informal discussions may be used to find solutions to identified concerns, so that shortcomings in conduct can be remedied.

Stage 1 - Initial Discussion

On becoming aware of an employee's alleged misconduct/gross misconduct (see [Appendix A](#) for examples), the appropriate manager must make initial enquiries about the incident/concern. This will normally, but not always, involve a discussion between the manager and the employee concerned to find out their version of events and to establish if there is an acceptable explanation. Whilst it is not usual practice for the employee to be accompanied at this stage, if their work colleague or Trade Union representative is available at the time of the discussion they may choose to be accompanied. Arrangements can be made for their companion to be involved in this discussion remotely (i.e., via Teams) if they are not available in person. However, this discussion must not be delayed if their work colleague or Trade Union representative is not available.

Following this discussion, the manager may decide:

- No further action is necessary;
- To deal with the matter informally. The employee should be advised of the expected standards and any remedial action which is required;
- That further investigation is required and to refer the matter to a Formal Investigatory Meeting (possibly including [suspension](#) of the employee).

Notes should be taken at this meeting and a copy sent to the employee.

Where the incident/concern involves any of the following, managers are advised to refer to the [Disciplinary Guidance](#) for information on additional procedures that must be followed:

- Criminal offences;
- Concerns of financial irregularity;
- Disciplinary action against a Trade Union representative;
- Concerns regarding safeguarding;
- Concerns relating to professional registration;
- Use of electronic surveillance records.

Stage 2 - Formal Investigatory Meeting

When concerns of misconduct or gross misconduct are made, an appropriate person, the "Investigating Officer", will be appointed to investigate the concerns and decide whether there is sufficient evidence to take disciplinary action. Further information regarding the role

of the Investigating Officer and how to conduct a thorough investigation can be found in the supporting [guidance](#) and the [Disciplinary Checklist](#).

No formal disciplinary action will be taken until the matter has been fully investigated. This includes providing the employee with the opportunity to attend a Formal Investigatory Meeting. Before meeting with the employee, the Investigating Officer should make enquiries regarding the concerns, which may include interviewing witnesses, and collating evidence to present to the employee at the Formal Investigatory Meeting. The employee has the right to be accompanied at the meeting by a work colleague or Trade Union representative.

The letter inviting the employee to the meeting should outline the general nature of the concerns (e.g. concerns relating to your conduct towards a service user). Notes should be taken at this meeting and a copy sent to the employee.

At the meeting the Investigating Officer will:

- Make clear to the employee what concerns have been raised;
- Ask the employee to respond to the concern(s) against them;
- Advise the employee that the matter may result in a formal disciplinary hearing where they will have the right to be accompanied by a work colleague or Trade Union representative

The employee will:

- Respond to the concerns/questions;
 - Produce evidence that supports their position;
- Provide the names of witnesses (if applicable).

The Investigating Officer will interview/obtain signed statements from witnesses following the employee's evidence (if applicable).

The Investigating Officer will collate **all the evidence**, including that which is favourable to the employee, and consider whether there is a case to answer. An [investigation report](#) will be produced, for consideration by their manager (or the manager for the employee's service area if the Investigating Officer is external or works in a different department) as to what action should be taken. The potential outcomes are:

- No further action is necessary;
- Deal with the matter informally. The employee should be advised of the expected standards and any remedial action which is required;
- Refer the matter to a formal disciplinary hearing (possibly including [suspension](#) of the employee).

Stage 3 - Disciplinary Hearing

The Investigating Officer (or the employee's manager if the Investigating Officer is external or works in a different department) will be responsible for arranging a panel.

The Stage 3 hearing will be heard by a manager with an appropriate level of seniority and impartiality, and a HR representative. If the panel do not agree on the outcome of the hearing, the Chair will have the casting vote.

The manager will invite the employee to the Stage 3 hearing giving them at least 10 working days' notice to attend the formal hearing. The letter will outline the reasons for the hearing and their right to be accompanied by a work colleague or Trade Union representative. The letter must state that a potential outcome of the hearing is dismissal (or summary dismissal in cases of gross misconduct). Employees should also receive copies of any relevant documentation that will be used as evidence at the hearing and be given the opportunity to provide any evidence that supports their case. Notes should be taken at the hearing and a copy sent to the employee. Details of the format the hearing should take can be found in the supporting [guidance](#).

The following outcomes are available to the panel dependent on the seriousness of the offence:

- No case to answer / no further action is necessary;
- First written warning (which will expire after 6 months);
- Final written warning (which will expire after 12 months);
- Dismissal (with or without notice).

Employees should be dismissed with notice except in the case of gross misconduct. In the case of gross misconduct, the employee should be summarily dismissed without notice.

The employee will be notified in writing of the outcome of the hearing. If the outcome is dismissal, the letter will include the reason for the dismissal and the date this is effective from. The letter must also include details of the employee's right of appeal.

Details of concerns (including warnings) that are connected to the safeguarding of children and/or vulnerable adults will be retained on an employee's personal file until retirement or for 10 years from the date of the allegation if that is longer. Other records may be held by agencies involved in investigating allegations. Expired safeguarding related warnings will be disregarded for future disciplinary purposes unless the new concerns also relate to safeguarding. If malicious allegations have been raised, these records must be destroyed. [The Local Authority Designated Officer \(LADO\)](#) must be contacted within one working day in respect of all cases in which it is alleged that a person who works with children has:

- Behaved in a way that has harmed, or may have harmed a child;
- Possibly committed a criminal offence against or related to a child;
- Behaved towards a child or children in a way that indicates they may pose a risk of harm to children.

In cases involving unacceptable behaviour (i.e. bullying and/or harassment), a mandatory meeting must be held at the end of the disciplinary process, except where the outcome has been dismissal, to re-establish working relationships between the relevant parties.

Suspension

Suspension is a precautionary measure and does not pre-determine in any way the outcome of an investigation. Suspension should only be considered if there are any concerns about the employee continuing in their role during the investigation. These concerns could include risks to themselves, colleagues, service users or the Council. Suspension should only be imposed after careful consideration, which may include the possibility of transferring the employee or adjusting their work as an alternative to suspension. Once suspension is confirmed, this must be kept under regular review. Employees may be suspended at any stage during the investigation process however advice must be sought from Corporate HR before any action is taken. The reason for the

suspension (i.e. an outline the nature of the concerns but not specifics) should be made clear to the employee and confirmed in writing. The employee does not need to be suspended to be dismissed for gross misconduct.

Failure to Attend

If an employee, a work colleague, or their trade union representative is unable to attend a Stage 2 Formal Investigation Meeting or Stage 3 Disciplinary Hearing with good reason, the employee may request for the meeting/ hearing to be rescheduled. The rescheduled meeting will take place as soon as possible within 5 working days of the original date. Where their trade union representative or work colleague is unable to attend the rearranged date, the Formal Investigation Meeting or Disciplinary Hearing may be held in their absence.

Alternatively, the employee may submit a written statement/case for consideration at the meeting or attend via telephone or Microsoft Teams conference call. Guidance on Remote Hearings can be obtained [here](#).

Where an employee fails to attend a Stage 2 Formal Investigation Meeting or Stage 3 Disciplinary Hearing without an acceptable reason or without prior notification the meeting/hearing may go ahead in their absence.

Right of Appeal

An employee has the right to appeal against all disciplinary sanctions and must be advised of this in the hearing outcome letter.

Appeals against warnings should be submitted to the Chair of the panel within 5 working days and will be heard, in line with the [Appeal Policy and Procedure](#).

Appeals against dismissal should be submitted to the Director of Law and Governance within 15 working days, and will be heard, in line with the [Members Appeals Procedure](#), by a panel of elected members of the County Council.

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Examples of Misconduct

The following list is not exhaustive but gives examples of offences which, if not serious in their nature may amount to misconduct:

- Persistent bad timekeeping;
- Unauthorised absence from work without reasonable cause;
- Dishonesty
- Damage to Council property;
- Failure to follow Council Procedures (including failure to seek advice on or comply with IR35 legislation);
- Abusive or disruptive behaviour;
- Minor breaches of Health and Safety regulations;
- Misuse of Council facilities;
- Undertaking unauthorised employment;
- Improper behaviour or conduct towards colleagues or members of the public;
- Unreasonable refusal to follow a management instruction;
- Breach of the Leicestershire County Council [Code of Conduct](#);
- Abuse of the Information Security and Acceptable Use Policy.

Serious examples of any of the above is likely to amount to gross misconduct.

Examples of Gross Misconduct

The following list is not intended to be exhaustive and gives only an indication of the types of offences which could be considered as gross misconduct:

- Serious incapability as a result of being intoxicated by reason of alcohol, non-prescribed drugs, illegal drugs, or prescribed drugs which may have an adverse effect on performance and safety;¹
- Deliberate falsification of reports, accounts, expense claims or self-certification forms;
- Theft, removal, or unauthorised possession or deliberately aiding another person to remove or failure to properly account for any property or facilities belonging to the Council or to another employee or customer;
- Breach of the Leicestershire County Council Code of Conduct;
- Fraud (i.e., an act of deception intended for personal gain or to cause a loss to another party) or corruption (i.e., the deliberate misuse of a position for direct or indirect personal gain);
- Unauthorised entry to computer records or deliberate falsification of records;
- Serious breach of the Council's Information Security and Acceptable Use Policy;
- Repeated refusal to carry out duties or reasonable instructions or to comply with Council policies and procedures;

1 - In certain cases drugs prescribed by a doctor or purchased from a chemist can induce drowsiness and will include the advice not to operate machinery. Employees must inform their line manager if they have taken such medicine and would normally be required to operate machinery or drive a vehicle during the course of their work.

- Deliberate (or negligent) refusal to seek advice on or follow advice received in respect of compliance with IR35 or any tax legislation;
- Serious breaches of confidence, confidentiality, or the General Data Protection Regulation (GDPR) / Data Protection Act (DPA) 2018;
- Deliberate or reckless damage to Council property;
- Serious acts of insubordination;
- Acts of bullying, harassment, sexual harassment, or discrimination (i.e. [unacceptable behaviour](#));
- Serious breach of the Council's safety rules or a single error due to negligence which causes or could have caused significant loss, damage or injury to the Council, its employees, or customers;
- Bringing the Council into serious disrepute;
- A criminal offence, which may (whether it is committed during or outside of the employee's hours of work) adversely affect the Council's reputation or the employee's suitability for or ability to undertake the type of work they are employed to perform;
- Violent or threatening behaviour;
- Failure to maintain professional registration where this is a pre-requisite for the post;
- Failure to maintain satisfactory DBS clearance where this is a requirement for the post.

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