

# **LEICESTER CITY COUNCIL DISCIPLINARY PROCEDURE**

## **1. Purpose**

**1.1** This procedure is designed to:

- help and encourage all employees to achieve and maintain appropriate standards of conduct
- resolve incidents of misconduct within the workforce.
- ensure prompt, fair and consistent treatment.

It supersedes all local protocols relating to the staff to which it applies.

## **2. Scope**

**2.1** This procedure applies to all employees of Leicester City Council who are employed under the terms and conditions of service of the following bodies:

- National Joint Council for Local Government Service Employees
- Joint Negotiating Committee for Local Authority Craft and Associated employees.

**2.2** This policy does not apply to:

- Chief Officers,
- anyone employed by schools and colleges or
- teachers employed to work in any centrally managed service

**2.3** This policy cross-refers to the following other City Council policies:

- Attendance Management Policy
- Code of Conduct and Behaviour at Work
- Harassment and Discrimination
- Policy on Substance Misuse
- Probationary Procedure
- Smoking Policy

## **3. Informal Action**

- 3.1 Where appropriate, a manager should address minor misconduct by taking informal action, such as giving an informal reprimand to the employee, and keeping their own note of the action they have taken.**
- 3.2 If the manager feels that firmer action is required, but a formal hearing is not necessary, they can give an oral warning that is confirmed in writing, which they will put on the employee's file, with a six month life span. The employee has the right to be represented at the meeting at which an oral warning confirmed in writing is given. They also have a right of appeal against this action.**
- 3.3** If these actions do not bring about an improvement in conduct, or the manager judges that the alleged misconduct is more than minor, the manager should take formal action.

## **4. Formal Action**

### **4.1 *Standards***

Formal action will meet the following standards:

- It will be confidential and non-discriminatory
- There will be no disciplinary action taken without investigation
- The employee will know the case against them and have the right to respond
- The employee will have the right to be represented at disciplinary hearings
- There will be no dismissal for a first offence, except in cases of gross misconduct
  
- **The employee will have the right to appeal against an oral warning confirmed in writing, a formal written warning, a final written warning, action short of dismissal and dismissal**
- All stages of this process will be managed to timescales which are fair and reasonable in the circumstances

### **4.2 *The Investigation***

- 4.2.1** The Investigating Manager will gather and evaluate all information relevant to the facts of the alleged misconduct. This may include interview evidence from witnesses, documents and other material evidence.
- 4.2.2** The Investigating Manager will interview the employee in order to understand their account of the alleged misconduct. The employee will have the right to be represented at this interview. **However, if the interview is delayed several times at the instigation of the employee, the Investigating Manager may give consideration to withdrawing the right of representation if this would mean that the investigation would be unreasonably delayed.**

### **4.3 *Suspension / temporary transfers during investigation***

- 4.3.1** At any point in cases of alleged misconduct, the manager may suspend or temporarily transfer the employee on full pay, if they judge this appropriate. These are not disciplinary sanctions but neutral acts, intended to protect the interests of both employer and employee.
- 4.3.2** The employee will have the right to be represented at the meeting where the manager tells them that they are to be suspended or temporarily transferred, subject to a representative being available at the time of the meeting and them not having a choice of representative.
- 4.3.3** **The period of suspension will be kept to a minimum and should not normally exceed three months except in exceptional circumstances. If it is likely that the suspension will exceed three months, then the Manager will write to the employee providing them with the reason for the extension of the suspension period.**

### **4.4 *Formal Hearing***

- 4.4.1** If the Investigating Manager forms a reasonable belief that there has been misconduct, they will refer this in writing to a disciplinary hearing. This will be heard by a manager with no prior involvement in the case.

**4.4.2** The Hearing Manager may call a pre-Hearing with all parties, in unusual or exceptional circumstances, in order to deal with any issues that could be resolved before the disciplinary hearing.

**4.4.3** At the full hearing, the Hearing Manager will resolve any procedural issues raised by either side. The Investigating Manager will present their case, evidence and witnesses, and take questions from the employee, the Hearing Manager and the HR representative. The employee will have the right to respond, by presenting their case, evidence and witnesses, and taking questions from the Investigating Manager, the Hearing Manager, and the HR representative.

#### **4.5 *Employee does not or cannot attend hearing***

**4.5.1** Where the employee is unable or unwilling to attend the disciplinary hearing without good cause, the Hearing Manager may decide to make a decision on the evidence available, and in the absence of the employee.

**4.5.2** If the employee becomes ill and is unable to attend either an investigation, or disciplinary or appeal hearing, they must provide a doctor's certificate for illness beyond the self-certification period.

**4.5.3** **If the illness is of short duration, the hearing may be arranged for a later date. Where the illness may become long term, the employee will be referred to the Council's Occupational Health Service, to ascertain whether or not they are fit enough to attend a hearing. The employee will be advised that the hearing may proceed in their absence. They will be told that they can make written representation directly themselves, or through their representative if their representative agrees to this.**

#### **4.6 *Fast-track action***

**4.6.1** If the employee admits to their misconduct, and all parties agree, the case can proceed to outcome without the need for a hearing, though the employee must be allowed to account for their conduct and put forward any mitigating factors.

This practice

- will not apply to cases where allegations of potential

gross misconduct are made, or cases of repeated misconduct where the employee is already on a final written warning.

- will not allow negotiation for a lesser sanction
- **can be refused by the Hearing Manager in exceptional circumstances**
- will still give the employee the right of appeal against the sanction imposed.

#### **4.7 Action against a trade union representative**

**4.7.1** Where this is proposed, the Hearing Manager will discuss the matter at an early stage with an official employed by the respective union, after obtaining the employee's agreement.

#### **4.8 Witness statements**

**4.8.1** The Hearing Manager may decide that the attendance of witnesses is unnecessary, in cases where witness statements are agreed by all parties, and with the agreement of all parties. The Hearing Manager will, however, be able to require the attendance of witnesses even where their statements are agreed.

**In cases where an employee wishes to use character witnesses, a character statement should be sought rather than requiring the attendance of character witnesses.**

#### **4.9 Representation**

**4.9.1** The employee has the right to be represented by a work colleague or trade union representative, or an official employed by the respective trade union. The employee has no right to legal representation, unless the alleged misconduct could lead to the employee's name being added to the register of those being unsuitable to work with children or vulnerable adults.

#### **4.10 Counter grievances**

**4.10.1** The Hearing Manager will consider the substance of the employee's complaint as part of the employee's representation within the disciplinary hearing. In exceptional

cases, however, the Hearing Manager will have the discretion to allow a grievance to be separately heard where they feel it is appropriate.

**4.10.2** Where the employee's grievance is not related to the disciplinary investigation, the normal Grievance Procedure will apply.

#### **4.11 *Criminal charges or convictions***

**4.11.1** Where employee conduct within the workplace has been referred for police investigation, it will also be subject to the normal City Council disciplinary investigation, and the disciplinary procedure will apply independently of any police investigation or outcome.

In Safeguarding cases, the City Council will work with all related agencies, and will take prompt, fair and reasonable steps to expedite the case.

**4.11.2** Where an employee has been charged with or convicted of a criminal offence outside the workplace, their alleged conduct will need investigating to determine if it merits action because of its employment implications. If the conduct is judged sufficiently serious, the disciplinary procedure will apply. The City Council may take prompt, fair and reasonable action without awaiting the outcome of any prosecution.

### **5. Outcomes**

#### **5.1 *Sanctions***

**5.1.1** The Hearing Manager will evaluate all information presented, and is empowered to determine an outcome, as follows:

- Disciplinary action is not justified, or
- Misconduct has been proved. The Hearing Manager will then apply one of the following,
  - First written warning (lifespan one year)
  - Final written warning (lifespan two years)
  - Final written warning plus an action short of dismissal
    - temporary demotion, without pay protection, for up to six months, or
    - withheld salary increment, or

- in exceptional circumstances, permanent demotion, with no pay protection. If no such post is found within three months, the Council will move to dismiss in the absence of such a post, or
- Dismissal

and inform the employee of their right of appeal.

**5.1.2** Whatever the outcome, the Hearing Manager may make recommendations to help the employee re-establish acceptable behaviour or performance standards.

## **5.2 *Gross misconduct and summary dismissal***

**5.2.1** Gross misconduct is generally seen as misconduct so serious that the Council may no longer be able to tolerate the presence of the employee, thereby justifying summary dismissal. Acts which constitute gross misconduct will be very serious, and will be determined by the Hearing Manager in the light of the particular circumstances of the case.

**5.2.2** The following list, which cannot be considered exhaustive, provides some examples of actions which will normally be regarded as gross misconduct:

- theft or fraud
- physical violence or bullying
- deliberate and serious damage to property
- serious misuse of the City Council's property or name
- deliberately accessing internet sites containing pornographic, offensive, discriminatory, illegal or obscene material
- serious insubordination
- unlawful discrimination or harassment
- bringing the City Council into serious disrepute
- serious incapability at work caused by alcohol or illegal drugs
- causing loss, damage or injury through serious negligence
- serious breach of health and safety rules
- serious breach of confidence.

**5.2.3** If the Hearing Manager, at the end of the full disciplinary procedure, is satisfied that the employee has committed an act of gross misconduct, the employee will normally be

summarily dismissed without notice or payment in lieu of notice.

## **6. Appeals**

**6.1 An employee who receives an oral warning confirmed in writing, a formal written warning, a final written warning, an action short of dismissal, or dismissal, will have the right to appeal. Appeals will be conducted in the manner of the first hearing, except that the appellant employee will state their case first, and the Hearing Manager will respond. The appeal will be heard by a senior manager not previously involved in the case, or elected Members in the case of dismissal, including dismissal as a result of no post being found after the sanction of permanent demotion is applied. An HR Adviser will also be present.**

The Appeal Manager will have the power to:

- uphold the sanction
- overturn the sanction
- impose a lesser sanction

## **7. Records**

**7.1** The Hearing Manager will keep a written record of the case, to include:

- the allegation against the employee
- the employee's defence, findings made and actions taken
- the reason for decisions made and actions taken
- whether an appeal was lodged
- the outcome of the appeal
- any grievances raised during the disciplinary procedure,
- notes of any formal meetings.

**7.2** In cases with Safeguarding implications, records must be sufficient to meet the formal guidelines for such cases.

**7.3** The Hearing Manager will ensure that a formal record of the hearing is made, and will seek the employee's agreement that it presents a true and accurate record of what was said and agreed at the hearing.



## **8. Review**

This policy will be reviewed and updated in line with relevant legislation, case law and emerging good practice.

## AN OVERVIEW OF HANDLING DISCIPLINE

ALWAYS FOLLOW THE CITY COUNCIL PROCEDURE AND MANAGEMENT GUIDELINES  
CONSIDER THE USE OF MEDIATION AT ANY TIME

