

# Disciplinary

# Policy and Procedure

## Policy statement

At Lancashire County Council, we recognise the importance of having a fair and equitable disciplinary policy. The [Code of Conduct](#) provides a framework of our standards and expectations for all employees working within the council. Maintaining and promoting high standards of behaviour will inspire and maintain mutual trust and confidence between employees and the council alike and this in turn will create a harmonious, safe, and respectful working environment.

We appreciate that we have a committed and dedicated workforce, however on occasion standards of behaviour may fall below what is expected and this could constitute misconduct. Therefore, this policy has been developed to ensure you are aware of the steps that will be taken in the event of a potential misconduct issue. This policy is aligned to the Acas Code of Practice.

## Scope

This policy applies to all council employees on LCC terms and conditions, excluding teaching and non-teaching employees employed by schools, and employees who transferred to the council in accordance with TUPE regulations and who remain on their previous terms and conditions of employment. The Chief Executive, the Monitoring Officer and Chief Financial Officer are also excluded from this policy.

This procedure does not apply in relation to capability, termination of a fixed term contract, dismissal attributed to redundancy, probation or sickness absence issues which should be addressed under the appropriate policy and procedure.

## Definition

Disciplinary procedures are a set way for an employer to deal with misconduct issues. More information regarding the definition of misconduct, including examples of gross misconduct, is included in [further guidance – levels of misconduct](#).

If the issues relate to an employee's skill or ability as opposed to a wilful or negligent act, or a breach in standards, the capability procedure should be applied.

## Principles

As a council, we expect employees to demonstrate good conduct in line with [the council's values](#), as this in turn supports us in meeting our organisational priorities. We expect all employees to operate with professionalism and integrity, and for managers to role model and embed this culture. All employees are responsible for ensuring that they undertake their duties in accordance with the required standards. These procedures are designed to be fair, transparent, and reasonable.

The following principles should be applied throughout this policy:

- The disciplinary procedure will be followed before a disciplinary sanction is issued.
- The instigation of the disciplinary procedure does not prejudice that disciplinary action will be taken.
- No employee will be dismissed for a first misconduct breach unless the action is considered to be gross misconduct (see [further guidance – levels of misconduct](#)).
- As the employee responding to the allegations, you have the right to be accompanied at investigation and disciplinary meetings or appeals by a work colleague, trade union representative or an official employed by a trade union. Witnesses may also be accompanied by a work colleague or trade union representative at investigation meetings to provide support.
- No formal action will be considered against a trade union representative until a full time official of the union concerned has been notified, after obtaining the responding employee's agreement. If the employee does not wish for the trade union official to be notified, this should be documented, and the disciplinary procedure will be followed, as required, in line with the procedure below.

- An advisor from Corporate HR may be present at all stages of the procedure as deemed necessary, and Legal advisor supporting the hearing chair at hearings if required.

If you have any questions regarding the disciplinary process or require any support or advice during this process, please contact your allocated investigating officer, or contact [AskHR](#) for procedural guidance. You can also refer to the [disciplinary guidance for employees](#).

## Disciplinary procedure - informal stage

Early intervention by management is important and should be part of the normal management process. In the event of a first minor misconduct issue, it may be all that is needed is a conversation with you to understand the issue and outline the standards required. As such, in the event you are considered to have committed an act of minor misconduct, your manager should work with you to explain the standard of conduct expected and agree how this can be improved upon. This may be documented in the form of 1:1 notes, via email or by a standards and expectations letter.

Business as usual meetings are not part of the formal disciplinary process and therefore you do not have the right to representation at these meetings.

### Preliminary enquiries

In the event the misconduct issue is repeated despite management advice and intervention, or should the misconduct issue be of a more serious nature, preliminary enquiries may be required in order to establish more information, so that an assessment can be made on whether it is more or less likely that the allegation occurred and what the appropriate next steps should be. This will normally be undertaken by the line manager or an appropriate manager, as determined by the service. If it is found that there is no evidence to support any misconduct having taken place, no formal action will be taken, however informal non-disciplinary action may be taken such as training or development.

## Disciplinary procedure - formal stage

### Step 1 – Formal procedure commences

In the event it is determined that a formal investigation is required, an investigating officer will be appointed by the service. You will be informed by the investigating officer of the allegations against you and that an investigation in line with the disciplinary policy will commence. This will be confirmed to you in writing. In the event any new allegations come to light, or if the allegation(s) need to be updated during the investigation, you will be informed in writing. You will be given reasonable notice of any investigation meetings.

It is important that confidentiality is maintained as far as possible during the disciplinary procedure. Although you are allowed to maintain contact with your colleagues during an investigation, it would not be helpful to discuss the details of any allegations with any other employee as this may have an adverse effect on the investigation process. However, if you consider that you need to speak to any colleagues for the purpose of obtaining information, or in the event you require access to information such as files or data relevant to the investigation, you should contact the investigating officer in the first instance to make any necessary arrangements.

### Alternative duties and suspension

There may be occasions where managers need to address a serious matter very quickly. This could include asking any employees involved in the situation, including yourself, to go home for up to two working days before a decision is taken on how best to handle the matter. This is not considered to be suspension from work or annual leave, and you will receive your normal pay for any time not worked. During this time, you should refrain from discussing the matter with other colleagues and should not attend work until you have been informed by your manager.

At the start of, or during the course of an investigation, you may be temporarily redeployed or provided with alternative duties (such as working from home, working from an alternative location, or withdrawal of access rights for a limited period of time).

In the event of a very serious allegation and/or where temporary redeployment or alternative duties are not considered appropriate, you may be suspended from work on full pay. Any decision to suspend will be authorised by your Head of Service or Director with advice from Corporate HR. This will be confirmed to you in writing. Any suspension from work is precautionary and does not constitute disciplinary action or prejudice any outcome; the intention of suspension is to ensure that the disciplinary process is not impeded. It is recognised that suspension

can be a difficult time and you will be allocated a contact person during this time to signpost you to support and as a channel for information during the suspension. Suspension will be kept under regular review, and in the event there are no longer sufficient reasons for it to continue, and/or if alternative working arrangements can be put into place that do not impede the process, it will be brought to an end.

Suspension or temporary redeployment should be considered where there are serious allegations and under the following circumstances:

- Where your presence could hinder the investigation
- Where you are considered to present a risk to the welfare of colleagues, service users or the public
- Where your presence may cause disruption or there is a high likelihood of repeated misconduct
- Where there are criminal proceedings taking place

The above examples are not exhaustive and are for guidance only. Each case must be considered on its merits.

You are expected to be available during any period of suspension for the purposes of maintaining contact, supplying information in respect of the investigation and to attend meetings or a hearing (with the exception of when you are on authorised annual leave). If you fail to respond to contact during your suspension, your absence may be considered unauthorised, and the appropriate guidance relating to [unauthorised absence](#) will be followed. Should you wish to take annual leave during the period of suspension, you should request leave in line with the normal procedure.

## **Step 2 – Formal investigation**

The length of the investigation will depend on the complexity and extent of the allegations. All relevant lines of enquiry relative to the allegations will be investigated to draw conclusions in respect of the allegations.

During the investigation you are encouraged to provide any information or evidence you wish to be considered to support your position.

The investigating officer will conduct interviews with witnesses as required. If you identify any witnesses that you believe should be interviewed as part of the investigation, you should make the investigating officer aware immediately to allow them to consider if their input is required. Witnesses will only be interviewed where they have witnessed and/or can comment on the allegation.

The investigating officer will provide each witness with a copy of their statement to sign normally within five working days of the interview. In the event there are any significant disagreements on the content of the witness statement, the requested revisions will be attached as a separate appendix in the investigation report. In the event the statement is not signed or returned within five working days of receipt (without good reason), this will be recorded within the investigation report and the statement will be taken as accepted and included in the report accordingly.

In exceptional circumstances, it may be necessary to redact statements, for example to protect witnesses if they are deemed to be at risk. Victimisation of witnesses is wholly unacceptable and is considered to be a misconduct matter in itself.

A report will then be produced at the end of the investigation. Consideration will then be made by an appropriate manager as to whether there are grounds for a hearing to be convened.

## **Step 3 – Disciplinary hearing**

In the event a disciplinary hearing is arranged, you will be given 5 working days' notice of the hearing, or 10 working days' notice in relation to an allegation(s) that could constitute gross misconduct. This will be confirmed to you in an invite letter. The evidence that will be referred to at the hearing will be attached to this letter. During the disciplinary hearing participants will be asked to confirm that they have read and understood the written statements provided during the investigation and investigation report. You will be given opportunity during the hearing to present your case and question the content of these documents and the witnesses called.

You should be aware that there may be occasions where witnesses are not invited to attend the hearing, for example where the witness statements provide limited information and/or in the event you have advised that you do not dispute the evidence. If you wish to invite any witnesses who have provided a statement during the investigation, you can request their attendance via the disciplinary chair. You are responsible for assisting any

witnesses you call in preparing for the hearing. You should ensure that you confirm the details of the witnesses you intend to call no later than 48 hours in advance of the hearing. Any witnesses you call must be able to provide relevant information in relation to your case.

## Disciplinary outcomes

In the event the misconduct allegation is upheld, you may be subject to a disciplinary sanction as per the table below:

Disciplinary Action	Period of 'live' warning
1 <sup>st</sup> Written Warning	6 months
2 <sup>nd</sup> Written Warning	12 months
Final Written Warning	18 months
Final Written Warning accompanied by a Transfer or Demotion*	18 months
Dismissal	N/A

\*A final written warning accompanied by a transfer or demotion will only be issued in the event there is a suitable vacant post in the service. The transfer or demotion will be with immediate effect and a compensation payment to offset any salary reduction will not be paid. If this is not a viable option, dismissal may need to be considered. The disciplinary hearing outcome letter may also include recommendations of other actions, such as required training.

All managers have the authority to issue 1<sup>st</sup> written warnings, 2<sup>nd</sup> written warnings and final written warnings following a disciplinary hearing. Heads of Service, or managers at Grade 12 and above (where authorised by their respective Head of Service under the Scheme of Delegation) have the authority to issue any one of the sanctions referred to above following a disciplinary hearing.

Whilst an incremental approach may be appropriate, particularly in respect of instances of minor misconduct, the level of action will depend on the specific circumstances of the case.

Warnings will cease to be live following the specified period of acceptable conduct and will be disregarded from your record, aside from in exceptional circumstances. In the event of further misconduct, any live warnings that relate to misconduct may be taken into account. However, all warnings (including expired warnings) or dismissal letters where the misconduct relates to safeguarding will be retained on your personal file, and may be referred to in the event of future misconduct.

You should be aware that any live disciplinary sanctions (and reason for leaving, if you were dismissed due to misconduct), may be shared in employment references (both internal and external). In exceptional circumstances expired warnings may be referred to in employment references, for example if you apply for a role to work with children or vulnerable adults, and you have received a disciplinary sanction that relates to a safeguarding issue, this will be referred to in the reference.

## Appeals

If you receive a warning or are dismissed due to misconduct following a formal disciplinary hearing, you have a right of appeal against the outcome. The appeal is not intended to repeat previous steps of the disciplinary procedure, but instead focuses on specific factors that you feel have not received due consideration such as the process was not followed correctly, that there is evidence that has not been considered or that the level of sanction was not proportionate.

If you wish to appeal, you must submit your grounds for appeal in writing to the manager named in the disciplinary outcome letter within 5 working days of the date that you received the outcome letter. It is really important that you set out the grounds on which you are appealing so that the manager considering your appeal can prepare to address these at the appeal hearing.

The appeal will be conducted by an appropriate senior manager who has not been involved in the disciplinary process previously.

The manager considering the appeal will invite you to an appeal hearing without unreasonable delay; this will normally be held within 20 working days of receipt of your appeal. If it is not possible to achieve this timeframe, this will be explained to you and the date will be confirmed.

After the hearing, the manager will notify you in writing of their final decision without unreasonable delay. There should be no increase to a sanction as a result of an appeal. This decision is final and there will be no further right of appeal.

## Other procedural matters

### Sickness absence during the disciplinary process

In the event you report sickness absence during the disciplinary process and produce a medical certificate (if your absence exceeds the self-certification period), your manager will engage with you to support you in your recovery. Your manager can explore potential adjustments with you such as the facility to provide written submissions or other additional support for the investigation meeting or hearing. Occupational Health may be approached for advice on your fitness to participate in the process and guidance on assistance that may help to support you during the disciplinary procedure.

If you report sickness absence during suspension, you will be advised that the suspension will be temporarily lifted, and you will be recorded as being absent from work due to sickness until such a point that you are fit to return to work. More information regarding sickness absence and sick pay can be found in the [attendance policy and procedure](#).

### Safeguarding

In the event the allegation relates to concerns around safeguarding vulnerable groups, including children, safeguarding procedures will be followed.

If the disciplinary procedure concludes that on the balance of probabilities misconduct of this nature has taken place, and it relates to harm or potential harm to children or vulnerable adults, it will be referred to the Disclosure and Barring Service. If the misconduct calls into question the registration of an employee who is a member of a professional body, then the council will make a referral to the relevant registration body – such as Social Work England and the Health and Care Professions Council (HCPC).

In the event you have witnessed a safeguarding concern relating to vulnerable groups and require more information, this can be found via the below links:

- [Safeguarding children](#)
- [Safeguarding adults](#)

### Resignation during the disciplinary process

You should be aware that if you decide to resign during any stage of the disciplinary process and if it is determined a disciplinary hearing should take place, the hearing may go ahead as planned during your notice period.

If the misconduct relates to safeguarding or potential harm to vulnerable adults or children, the allegation(s) will continue to be taken forward whether you remain in employment or otherwise. Under these circumstances you may be held to your contractual notice period in order to conclude the disciplinary matter. In the event you do not agree to work your notice, you may be asked to attend a safeguarding meeting after your employment has ended to consider what action the council would have taken had you remained in employment in order to fulfil our safeguarding obligations. You will be invited to this meeting in writing and provided any evidence that will be referred to as part of that meeting, such as investigation reports or witness statements. This meeting will give you the opportunity to state your case and in these circumstances you would have the right to be accompanied by a work colleague, trade union representative or an official employed by a trade union. If you do not participate in the process, the matter will be concluded in your absence. The outcome of that meeting will be confirmed to you in writing. In the event you are dissatisfied with the outcome, you are advised to direct any queries to the relevant professional body to whom the safeguarding referral was submitted by management.

You should be aware that in the event of an employment reference request, in particular when moving into a role working with vulnerable adults or children, or any employment which poses a safeguarding risk, the council may disclose the disciplinary allegation as part of that reference, whether the process is concluded or otherwise.

### Criminal matters (including fraud)

In the event the misconduct issue is potentially a criminal matter, consideration will be made by the investigating officer (with advice from Corporate HR, and Internal Audit if required) as to whether it is appropriate to inform the police.

In some circumstances, the police are obliged to complete their own investigations before the council can commence their own, and there may be a significant time delay between the alleged incident and court dates.

Each case will be dealt with on its own merits, and there may be occasions where there is enough information available to pursue and conclude any internal procedures prior to the outcome of legal proceedings.

If you are charged, cautioned, or convicted of a criminal offence, it is important you notify your manager as soon as possible. Failure to do so may be considered an act of misconduct in itself.

All investigations relating to financial crime matters including theft/fraud, money laundering, bribery and corruption should be immediately referred to Internal Audit at [internalauditinvestigations@lancashire.gov.uk](mailto:internalauditinvestigations@lancashire.gov.uk) who will progress the investigation in line with the corresponding council policies. The [Fraud Response Plan](#) should be referred to for further information.

### **Misconduct issues outside of the workplace**

There may be occasions whereby misconduct issues occur outside of the workplace and may not be directly related to your work within the council. For example:

- Fraud
- Threatening and abusive behaviour
- Theft
- Assault/violence
- Hate crime related to race, religion or belief, sexual orientation, disability, and gender identity
- Sexual offences
- Bringing the council into serious disrepute/affect public confidence

Whilst such actions may have occurred outside of the workplace, there may be an impact of the alleged offence on the employment relationship. For example, in the event a Finance Manager commits fraud outside of the workplace, this may give rise to concerns around their suitability to continue within/to undertake their role and potential risk to council finances. Similarly, in the event a Care Assistant who works with vulnerable service users is accused of sexual offences, this may result in concerns about their potential risk. In some cases, it is unclear, and in all instances, advice should be sought from Corporate HR.

In the event concerns are raised regarding your conduct outside of work and this is deemed to have a bearing on your ability or suitability to undertake your duties, the disciplinary procedures set out above should be adopted.

### **Malicious or vexatious allegations**

The council reserves the right to take disciplinary action as appropriate against any employee that is found to have made a malicious or vexatious allegation.

### **Grievances**

In the event you raise a grievance at any point of the disciplinary process, the most appropriate channel to respond to your complaint will be considered on a case-by-case basis. Where the issues are intrinsically linked to the disciplinary matter, it may be appropriate for the points to be raised within the disciplinary process (i.e. at the investigation or hearing stage). Alternatively, consideration will be made to pausing the disciplinary matter whilst the complaint is addressed. Advice would be taken from Corporate HR under these circumstances.

### **Confidentiality**

All those involved in any aspect of this disciplinary procedure shall treat all information in connection with any particular case as confidential between the employee, their representatives (including independent advisors for the responding employee, such as Acas), and the council, and shall not divulge any such information to any third party without the consent of the Director of Corporate Services (Senior Information Risk Officer) prior to the disclosure of any such information.

It is important to note that absolute confidentiality cannot be guaranteed in disciplinary proceedings as Courts and Employment Tribunals may order the disclosure of documents, irrespective of whether or not they are confidential.

We do not allow meetings to be recorded at any stage of the process as this could make the attendees present feel uncomfortable and therefore less willing to contribute, but the manager considering the issues (or another suitable participant) will take notes at meetings to summarise the key points. Notes taken will not be detailed minutes of the meeting and will not be shared with you as a matter of routine. Therefore, if you wish to make your own notes during the meeting, you are welcome to do so.

### Disability / underlying health conditions

If you have a disability or underlying health condition, appropriate support mechanisms will be accommodated wherever practicable at any stage of the process for any participant involved. All requests for reasonable adjustments will be sympathetically considered on a case-by-case basis, taking into account any medical evidence as appropriate.

## Additional Support

If at any point you need additional support whilst participating in the disciplinary procedure, please contact the [Employee Support team](#) on 01772 538333, who can provide an impartial listening ear and practical help to all employees who may have work-related or personal problems or concerns. You may also access the council's [employee health and wellbeing resources](#). Alternatively, you can contact your trade union if you are a member.

## Documents & Useful Links

- [Code of Conduct](#)
- [Disciplinary – Guidance for Managers](#)
- [Disciplinary – Guidance for Employees](#)
- [Council's Vision and Values](#)
- [Employee Support Team](#)
- [Membership of a Trade Union](#)

## Policy Version Control

Version	Date	Change
1	##/##/22	<ul style="list-style-type: none"><li>• Definition section added.</li><li>• Executive Directors and Director of Public Health no longer referenced in exceptions of application of policy.</li><li>• Principles updated including:<ul style="list-style-type: none"><li>○ That no employee will be dismissed for a first breach unless it is considered to be gross misconduct</li></ul></li><li>• Informal stage added.</li><li>• Preliminary enquiries added.</li><li>• Management has the option to send employees home for two working days to enable them to determine the best course of action</li><li>• Reference to alternatives to suspension added.</li><li>• Reference to return of witness statement within five working days.</li><li>• All participants will be asked to confirm that they have read and understood the report and statements before attending the hearing.</li><li>• Rewording of section relating to disciplinary sanctions and when they may be taken into account.</li><li>• Other procedural matters section added including:<ul style="list-style-type: none"><li>○ Sickness absence during the disciplinary process</li><li>○ Safeguarding</li><li>○ Resignation during the disciplinary process.</li><li>○ Criminal matters (including fraud)</li><li>○ Misconduct issues outside of the workplace</li><li>○ Malicious or vexatious allegations</li></ul></li></ul>

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- Grievances
  - Confidentiality
  - Disability / underlying health conditions
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