

**NORTH LINCOLNSHIRE COUNCIL**

**POLICY AND RESOURCES CABINET MEMBER**

**DISCIPLINARY PROCEDURE**

**1. OBJECT AND KEY POINTS IN THIS REPORT**

- 1.1 To outline and seek approval to update the council's Disciplinary procedure.

**2. BACKGROUND INFORMATION**

- 2.1 The procedure has been updated regarding the use of evidence in disciplinary investigations. This follows a recent case in which CCTV evidence was used to substantiate an allegation of misconduct against an employee. Following this case the council was provided with advice on such situations from the Information Commissioner's Office (ICO).
- 2.2 The procedure now states that evidence from CCTV and other sources, such as computer and telephone records may be used. It also cross references the council's CCTV Surveillance Scheme Code of Practice. This Code provides more detail on access to, and use of CCTV images.
- 2.3 The procedure has also been updated to include revised statutory guidance from the Department for Education (DfE). The guidance for local authorities applies when handling allegations of abuse against teachers and other staff working with children and young people.
- 2.4 In allegations of this nature the statutory guidance amends several areas of disciplinary practice, including:
- Resignations
  - Referral to regulatory bodies
  - Retention of records and references

**3. OPTIONS FOR CONSIDERATION**

- 3.1 To approve the revised procedure.
- 3.2 To reject the revised procedure.
- 3.3 To recommend amendments to the revised procedure.

**4. ANALYSIS OF OPTIONS**

- 4.1 Accepting the revisions will ensure that the procedure complies with best practice guidance from the ICO and statutory guidance from the DfE.

4.2 Rejecting the procedure would result in the council not following advice provided by the ICO and the DfE.

4.3 Recommending further changes to the procedure would require further consultation and delay implementation.

## 5. **RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)**

### 5.1 **Financial**

None.

### 5.2 **Staffing**

None.

### 5.3 **Property**

None.

### 5.4 **IT**

None.

## 6. **OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)**

6.1 Revisions to the procedure comply with the DfE's statutory guidance on 'Dealing with allegations of abuse against teachers and other staff'.

6.2 An integrated impact assessment has considered the diversity implications of the revisions made to the council's Disciplinary procedure.

## 7. **OUTCOMES OF CONSULTATION**

7.1 The trade unions have been consulted and are in agreement with the proposals.

## 8. **RECOMMENDATIONS**

8.1 That the revised procedure is approved and adopted.

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Date: 27 December 2012

**Background Papers used in the preparation of this report**

[Dealing with allegations of abuse against teachers and other staff \(DfE\)](#)

### 1.0 INTRODUCTION

1.1 This procedure is designed to encourage employees to maintain acceptable standards of conduct and correct behaviour. Its primary purpose is not a dismissal procedure.

1.2 It will:

- apply to all employees of the council other than those employed by schools with delegated powers; and
- be applied in a fair, consistent and non-discriminatory manner at all times.

1.3 Before taking action under this procedure, the manager should attempt to resolve the matter informally.

1.4 Minor cases of misconduct should be dealt with by informal advice, coaching and counselling unless this has proved ineffective already.

1.5 During the formal procedure, the employee whose conduct is in question will be:

- informed that he/she has the right to be represented/accompanied by a trade union representative or fellow worker of the council; and
- be offered confidential support and counselling.

*Note 1: The trade union representative or fellow worker must not be otherwise involved in the particular case. If the employee is a trade union representative see 2.4.*

1.6 When an allegation of misconduct arises (see Appendix 1 for guidance) all of the facts must be established promptly.

### **Allegations against people who work with children**

1.7 Where an allegation is made against an employee who works with children and it indicates that the employee has:

- behaved in a way that has harmed a child, or may have harmed a child;
- possibly committed a criminal offence against or related to a child; or
- behaved towards a child or children in a way that indicates he or she would pose a risk of harm if they work regularly or closely with children,

the Local Safeguarding Children Board (LSCB) procedures for managing allegations against people who work with children should be followed. The LSCB procedures can be obtained by searching for 'Safeguarding Children' on the council's website.

- 1.8 Contact must also be made with the Local Authority Designated Officer (LADO) before an investigation commences. Initial discussions with the LADO should take place in advance of an employee being informed of an allegation, in order for agreement to be reached on what information can be disclosed to the individual.
- 1.9 If the Police undertake an investigation it may be necessary to suspend any internal procedure until that investigation is concluded.

*Note 2: If the allegation/s involve vulnerable adults the matter must be similarly referred to the council's Adult Safeguarding team before the investigation commences.*

### **Evidence**

- 1.10 CCTV and other data (i.e. Internet, email, telephone and building access records) are not used for routine monitoring of employees. However, should employees who commit acts of suspected criminal activity or alleged gross misconduct be captured in any of these electronic media this evidence may be used in disciplinary matters.
- 1.11 Access to, and use of CCTV images will be in line with the council's CCTV Surveillance Scheme Code of Practice, which can be accessed via the council's website. Access to other electronic media should be requested via the council's internal Audit team in conjunction with Human Resources (HR).
- 1.12 Such evidence may also be used by an employee responding to a disciplinary investigation and will be provided where possible.

### **Customer complaints**

- 1.13 Where an employee's attitude or competence causes concern this may be raised through the council's Customer Complaints policy. If a disciplinary investigation originates from a customer complaint it will be investigated in accordance with this

procedure. Where there are aspects of the complaint not covered by the disciplinary investigation, they may continue to be dealt with under the Customer Complaints policy.

1.14 If a complainant asks to be informed of the outcome of the disciplinary investigation, they will generally be given the same information as if the matter had been dealt with solely under the Customer Complaints policy:

- what happened,
- why it happened and
- what action has been taken to prevent it happening again.

They can also be told, in general terms, that disciplinary action may be taken as a result of the complaint.

### **Informal management review**

1.15 The manager of the employee whose conduct is in question or a delegated senior officer must undertake an initial assessment of the situation to assess whether informal resolution is possible. He/she will talk to those directly involved to establish the main facts of the case. If the manager can resolve the matter by taking corrective action at this stage he/she should do so. Corrective action may involve admonishment, instruction on appropriate behaviour or management counselling. A note should be kept of the allegation and the action taken. Any action taken under this paragraph does not constitute formal disciplinary action.

*Note 3: If the allegation/s concern the misuse of digital technologies, fraud or issues of a wider financial nature the council's Audit and Risk Manager should be contacted before a formal investigation commences.*

## **2.0 FORMAL PROCEDURE**

2.1 If an informal management resolution is not appropriate, the Head of HR will appoint an investigating officer, within 5 working days. The investigation will begin without delay and be completed as quickly as possible. The investigating officer will have the authority to require full co-operation from all employees concerned. Failure to co-operate may be considered a breach of acceptable conduct.

- 2.2 The investigating officer will ensure that the employee whose conduct is in question is:
- Informed in writing of the matter being investigated;
  - given a copy of the disciplinary procedure;
  - advised of the detail of the allegation/s as far as it is known at the time;
  - given the right to be represented/accompanied at all stages;
  - made aware of the availability of support and assistance from the council's Confidential Staff Welfare and Counselling Service and/or a nominated HR officer.
- 2.3 The investigating officer should establish whether the employee will be represented by a trade union and as appropriate ask the employee to confirm the name of the trade union representative as soon as possible. Thereafter, unless the employee objects, all correspondence and other papers will be copied to the named trade union representative.
- 2.4 Although normal disciplinary action (including precautionary suspension) must be taken where appropriate against trade union representatives, consideration should be given to making contact with the appropriate senior trade union representative prior to proceeding. This should only occur however **with the agreement** of the trade union representative whose conduct is in question.
- 2.5 The investigating officer will identify and interview all witnesses required to establish the facts. A written statement will be taken from all persons interviewed. All such statements must be typed, and then agreed by the person interviewed who will be required to sign and date each page. Each witness will be advised that he/she may be required to attend a subsequent hearing and that the matter must remain confidential. Documentary and other evidence should also be gathered at this stage.
- Note 4: At all stages of the procedure witnesses who are also employees of the council should be reminded of the availability of the confidential staff welfare and counselling service.*
- 2.6 The employee whose conduct is in question will be called to a fact finding interview, having been given full details of the allegation/s and reasonable time to prepare.

(See paragraph 2.8 below if suspension is a possibility.) At the interview the employee will be asked for a response to the allegation/s and his/her responses will be recorded in the form of a note of the meeting. A copy of the typed notes of the meeting will be forwarded to the employee whose conduct is in question.

- 2.7 If the employee is absent through sickness and advises that he/she is unable to attend a fact-finding interview the investigating officer should seek an alternative date as long as it is within five working days of the original date. Failing this, advice should be sought from the council's occupational health provider on the employee's fitness to attend and/or any disability implications.

### **Precautionary suspension**

- 2.8 In circumstances of:
- Alleged potential gross misconduct;
  - where relationships have broken down or;
  - where it is considered there are risks to the employee, the council, other parties or property,
- the employee should be suspended from work on normal pay pending investigation.
- 2.9 An employee found to have committed gross misconduct will normally be dismissed from all contracts of employment with the council. This possibility should be made clear to the employee at the start of the investigation. Therefore, any precautionary suspension will normally apply to all contracts.
- 2.10 Advice will be sought from the Assistant Director Human Resources (ADHR) prior to suspension, wherever possible. The reason for the suspension will be confirmed in writing to the employee with a copy to the ADHR. Such suspension is precautionary and will not prejudice the outcome of any subsequent disciplinary hearing.
- 2.11 If an employee is suspended the investigation **will take priority over all other work**. Precautionary suspensions will be kept under active review at all times and will not continue for any longer than is necessary.

- 2.12 The suspended employee will be offered confidential support and counselling and a designated HR contact during the period of suspension. Every effort will be made to keep the suspended employee informed of the progress of the investigation, subject to the limitations imposed by any children's/adult social care and/or police investigation.

### **Timescale**

- 2.13 It is recognised that the time needed to conduct a thorough investigation will vary. The aim should be to complete investigations within 4 working weeks wherever possible; no investigation should take longer than 12 working weeks unless there are external factors beyond the control of the investigating officer. In the event that an ongoing investigation exceeds 12 weeks, the employee whose conduct is in question, their representative and the ADHR will be kept informed of progress on a monthly basis.

### **Resignations**

- 2.14 The fact that an employee tenders his or her resignation must not prevent an allegation being followed up. This must occur in cases of allegations bearing on the safety or welfare of children. Wherever possible, the individual should be provided with an opportunity to answer the allegation and give an account of it.
- 2.15 The process of documenting the allegation, corroborating evidence and reaching a decision about whether it can be substantiated on the information available should continue and be recorded even if the person does not cooperate.
- 2.16 It may be difficult to reach a decision in these circumstances, and it may not be possible to apply any disciplinary sanctions if an employee's period of notice expires before the process is complete, but it is important to reach and record a conclusion wherever possible.

### **Decision to proceed**

- 2.17 Having completed the investigation, the investigating officer should assess the situation on the basis of the evidence obtained and decide how to proceed. The



employee, the employee's Director and the relevant Head of HR will be informed, including in resignation scenarios. There are normally three options available to the investigating officer:

- No further action;
- management counselling;
- a disciplinary hearing.

2.18 Directors with the support of HR will be responsible for taking disciplinary action within their directorate but may delegate this responsibility to a senior manager. The exceptions to this are disciplinary matters arising from Dignity at Work investigations, which will be chaired by an independent Director.

### **Management counselling**

2.19 Where conduct is lower than the standard normally accepted but is of a relatively minor nature or is considered out of character, management counselling rather than a formal disciplinary hearing may be recommended.

2.20 Management counselling will normally take the form of an interview at which the employee will be informed what improvement in their conduct is expected and for how long this will be kept under review. This will not normally exceed a period of six months.

2.21 At the interview the manager will:

- Clearly explain the shortfall between the employee's conduct and the required standard;
- establish the possible causes of the unacceptable conduct;
- identify the required remedial action;
- identify any necessary training, development, support or other interventions;
- obtain the employee's commitment to reaching the required standard;
- explain that failure to meet the required standard of conduct may result in formal disciplinary action.

### **3.0 DISCIPLINARY HEARING**

#### **Case management hearing**

- 3.1 A case management hearing may be held at the request of either party so long as both parties agree to it. The purpose of the hearing is to consider and attempt to resolve any procedural issues and/or agree witness statements and witnesses attending wherever possible. The meeting will be chaired by the officer responsible for the disciplinary hearing with the support of a Head of HR or Legal and Democratic Services. The presenting officer and the trade union representative or the employee (if unrepresented), will be present.

#### **Disciplinary hearing**

- 3.2 The employee will be given notice in writing at least 10 working days in advance of the time and place of the hearing and copies of all the documents that are to be relied upon as evidence. This will include all witness statements, including those not being relied upon as evidence, together with a copy of the disciplinary hearing procedure and the names of witnesses available to be called.
- 3.3 The employee shall provide the investigating officer with the names of any witnesses he/she intends to call and all documents relevant to his/her defence at least five working days in advance of the hearing. Thereafter all documentation received will be circulated to the disciplinary panel.
- 3.4 If the employee or their representative is not available on the date given for the hearing, an alternative date will be sought as long as it is within 10 working days of the original date.
- 3.5 If the employee is off sick and advises that he/she is not available to attend an effort should be made to agree a date within a reasonable timescale. Failing this, advice will be sought from the council's occupational health provider on the employee's fitness to attend a hearing. If the employee fails to attend having been deemed fit to do so, the hearing may be conducted in his/her absence.

- 3.6 At the start of the hearing the chair should make introductions and remind all present of the hearing procedure and the requirement for confidentiality to be maintained. The procedure to be followed is detailed in Appendix 2.
- 3.7 Evidence which was not circulated in advance will only be allowed at the discretion of the chair and normally, only if both parties agree to it. The reason for the decision will be given and noted.
- 3.8 After all the evidence has been heard the chair will give his/her decision to both parties as soon as possible. The right of appeal will also be outlined. Both the sanction and the right of appeal will be confirmed in writing within five working days. The letter should state:
- The allegation/s found/ not found, and, if found (see 3.9);
  - the level of sanction applied.
- 3.9 The following definitions should be used when determining the outcome of allegations of abuse against employees who work with children:
- **Substantiated:** there is sufficient identifiable evidence to prove the allegation;
  - **false:** there is sufficient evidence to disprove the allegation;
  - **malicious:** there is clear evidence to prove there has been a deliberate act to deceive and the allegation is entirely false;
  - **unfounded:** there is no evidence or proper basis which supports the allegation being made. It might also indicate that the person making the allegation misinterpreted the incident or was mistaken about what they saw. Alternatively they may not have been aware of all the circumstances;
  - **unsubstantiated:** this is not the same as a false allegation. It means that there is insufficient evidence to prove or disprove the allegation. The term, therefore, does not imply guilt or innocence.

## 4.0 LEVELS OF DISCIPLINARY SANCTION

### **Oral warning**

- 4.1 Where conduct does not meet acceptable standards and management counselling is not deemed to be adequate or has taken place previously, the employee will normally be given a formal oral warning in the first instance. He/she will be advised orally and in writing. A copy of the oral warning will be kept on the employee's personal file, but it will be disregarded for disciplinary purposes after six months, subject to satisfactory conduct.

### **Written warning**

- 4.2 Where the offence is a more serious one or if a further offence occurs within six months of the issue of an oral warning, a written warning will be given to the employee orally and in writing. A copy of the first written warning will be placed on the employee's file, but it will be disregarded for disciplinary purposes after six months, subject to satisfactory conduct.

### **Final written warning**

- 4.3 Where the offence is a substantial breach of conduct, which warrants only one warning but is insufficient to justify dismissal or where further misconduct occurs within six months of the issue of a first written warning, a final written warning will be issued to the employee. It will warn, in writing, that the final written warning is the last stage of the procedure before dismissal and that a failure to improve or any further misconduct may result in dismissal. A copy of the final written warning will be held on the employee's personal file but will be disregarded for disciplinary purposes after 12 months, subject to satisfactory conduct.

### **Dismissal**

- 4.4 Where the offence constitutes serious misconduct following any previous warning and a further warning is considered inappropriate or misconduct occurs following a final written warning, dismissal with notice will normally result. The employee will

be provided with written reasons for dismissal, the date on which employment will terminate and the right of appeal normally within five working days.

### **Summary dismissal**

4.5 If after completion of the investigation, and following a hearing the chair is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice. The employee will be provided with written reasons for the dismissal, the date on which employment terminated and the right of appeal. Examples of offences which the council would normally regard as gross misconduct include:

- Theft of the council's property or assets;
- fighting/assault of another person;
- wilful damage to council property;
- fraud or deliberate falsification of records;
- serious negligence which causes loss, damage or injury;
- serious incapability due to alcohol or other substances, or
- serious acts of insubordination, discrimination or harassment.

This list is for guidance only and should not be regarded as exhaustive.

### **Disciplinary transfer**

4.6 In cases of harassment/bullying arising from a Dignity at Work Investigation an employee may, in exceptional circumstances, be offered a transfer to another post as an alternative to dismissal where the independent Director considers this appropriate and where an alternative position is available. A final written warning will accompany such a transfer.

### **Right of appeal**

4.7 If a disciplinary sanction is imposed the employee will be advised of their right of appeal. All appeals must be made in writing within 10 working days of the written notification of the decision.

4.8 The employee should indicate the grounds for appeal stating whether it is against the severity of the sanction or if the facts relied upon in the judgement are disputed.

A form is provided for this purpose.

- 4.9 If against the severity of the sanction, the appeal will consist of both parties making summary submissions with the officer who made the original decision representing the council. Normally in such circumstances no witnesses will be called or new evidence allowed.
- 4.10 If the appeal is on the facts of the case or if procedural anomalies are alleged there will normally be a full re-hearing of the evidence with all witnesses available to be called. New evidence from either party will be allowed if submitted with the papers at least five working days in advance of the hearing.
- 4.11 If the grounds of the appeal are not specified and cannot be clarified, a full re-hearing will take place.

### **Oral, written and final written warnings**

- 4.12 The appeal should be in writing to the Director who will hear the matter. Where a hearing has been heard by the Director, the appeal should be sent to the Assistant Director Legal and Democratic Services, who will arrange a meeting of the Appeals Committee.

### **Dismissal and summary dismissals**

- 4.13 The appeal must be made in writing to Assistant Director Legal and Democratic Services who will arrange for it to be considered by the Appeals Committee. Action to implement decisions to dismiss will not be suspended pending the appeal but should the appeal be upheld, the appellant will be reinstated to his or her original post without a break in service.

## **5.0 REFERRAL TO REGULATORY BODIES**

- 5.1 If an employee who works with children or vulnerable adults in regulated activity is dismissed on certain grounds of misconduct or resigns in circumstances where dismissal was a possibility, the council have a statutory right to inform the Disclosure and Barring Service (DBS). Casual workers and supply teachers must also be referred when their engagement ceases in similar circumstances.

- 5.2 Referral may also be required to separate professional bodies in the case of:
- Registered teachers to the Teaching Agency;
  - Social workers to the Health & Care Professions Council.
- 5.3 Specific guidance should be obtained on a case by case basis from the appropriate regulatory body and the council's legal department before a referral is made.
- 5.4 All employees who are subject to a referral in accordance with the above paragraphs should be given confirmation of this action in writing.

### **6.0 RETENTION OF RECORDS AND REFERENCES**

- 6.1 Relevant documentation relating to allegations of a child protection nature will be permanently retained on an employee's personal file, for reference purposes. Any reference to allegations that are found to have been malicious should be removed from an employee's personal file and computer records, in their entirety.
- 6.2 All other disciplinary records will be removed from employees' personal files and be disregarded for further disciplinary action immediately after the currency of the penalty expires, with the exception of the letter to the employee that confirms the outcome of the disciplinary hearing.
- 6.3 Allegations which are proven to be false, unsubstantiated, unfounded or malicious must not be included in employer references. Nor must a history of repeated concerns or allegations which have all been found to be false, unsubstantiated, unfounded or malicious be included in any reference.
- 6.4 All papers, once removed from personal files, including hand written notes and documentary evidence together with a record of any appeal or other developments must be retained. These records will be kept confidentially for a period of six years, before being destroyed.
- 6.5 Computer records retained will only contain information necessary to fulfil obligations to provide factual information for employment references, particularly in

cases where employees have left employment and personal files are not immediately accessible.

## **7.0 ADDITIONAL**

- 7.1 Subject to the provisions of 7.2 below, the Chief Executive will be responsible for taking disciplinary action against Directors in accordance with this procedure. The Appeals Committee will consider any subsequent appeals.
- 7.2 In the event of an allegation or suspicion of misconduct arising against the Chief Executive, the Director of Policy and Resources or the Monitoring Officer, the procedure contained within the JNC for Chief Executives handbook will apply.