

EMPLOYMENT POLICY

# Disciplinary

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## 1. Scope & Purpose

- 1.1. The purpose of this document is to provide a framework for improving an employee's conduct. Whilst many matters can be resolved informally, on occasions a formal process is required to deal with more serious acts of misconduct.
- 1.2. This policy does not apply to matters relating to an employee's ability to do a role. Matters such as this should be managed using the managing performance policy.
- 1.3. Employees are responsible for ensuring they are familiar with the policy and any updates to this. Employees are directed to myLothian for the most up to date policy. It is the responsibility of managers to comply with the policy and its application.
- 1.4. This policy applies to all Lothian Group employees, regardless of length of service or contract status. For clarity it does not apply to agency workers or self-employed contractors. Employees within their probation period, should be managed under the probationary policy and procedure.

## 2. Definitions

- 2.1. **Misconduct** - is an act or behaviour that the business deems unacceptable and requires an employee's conduct to improve.
- 2.2. **Gross Misconduct** - is misconduct of such a serious and fundamental nature that it breaches the contractual relationship between the employee and the business. In the event that an employee commits an act of gross misconduct, the business will be entitled to terminate employment summarily.
- 2.3. **Summary Dismissal** - is dismissal without notice in cases where an act of gross misconduct has been committed and the employee is dismissed with immediate effect.

## 3. Key Principles

- 3.1. The Lothian Group and its employees should raise and deal with issues promptly. The Line Manager should act consistently and carry out any necessary investigations to establish the facts of a case. Where there is a concern about an employee's conduct, the Line Manager should inform the employee(s) of the basis of their concerns and give them the opportunity to present their case before any decision is made.

- 3.2. An Investigation must take place before any disciplinary hearing is arranged.
- 3.3. Employees have the right to be accompanied by a work colleague or a trade union representative to any formal meeting.
- 3.4. A disciplinary matter will normally represent an act of misconduct or gross misconduct.

## 4. Misconduct Examples

- 4.1. Depending on the severity of some of the examples below, they could also constitute as gross misconduct:
  - Persistent poor timekeeping, including lateness, breaks, or early finishing.
  - Breach of social media policy.
  - Unauthorised absence (AWOL).
  - Disclosure of confidential information to third parties (e.g. tenders, personal details of employees etc.)
  - Minor damage to Lothian Group property, vehicles, including stock/equipment & failure to report it to management.
  - Failure to observe Lothian's procedures.
  - Abusive or inappropriate behaviour towards colleagues, management and customers.
  - Raising allegations / concerns / grievances in a malicious manner.
  - Any action that contravenes Health & Safety policies.
  - Failure to follow a reasonable request issued by a manager or supervisor.
  - Persistent unauthorised use of business mobile phones or persistent use of personal mobile phones.
  - Misuse of the Lothian's facilities, e.g. e-mail and internet.
  - Smoking in non-designated areas of Lothian's premises.

- Failure to adhere to operational business standards.
- Failure to comply with the uniform and dress policy.
- Early and persistent late running of a bus.

## 5. Gross Misconduct Examples

- Theft (attempt or otherwise), deception, fraud, and/or deliberate falsification of Lothian's records or any material associated with the business.
- Physical violence or the threat of violence.
- Discrimination or harassment of a fellow worker on the grounds of gender, marriage sexual orientation, race, age, disability, or religion or belief.
- Deliberate damage to Lothian's property, equipment, stock etc.
- Conduct that brings the Lothian Group name into disrepute.
- Falsification of records, reports, accounts, expense claims, application form or self-certification forms whether or not for personal gain.
- Unauthorised absence; (AWOL).
- Sexual misconduct at work.
- Being under the influence of alcohol or illegal drugs whilst at work.
- Possession, custody or control of illegal drugs on the Lothian's premises.
- Gross negligence.
- Failure to inform Lothian Group within 24 hours of the conviction of a criminal offence, summons or charge which reflect adversely on the Lothian Group or affect the employee's ability to perform the employee's job.
- Failure to inform and produce a driving licence that has received endorsements since the last company check.

- Disqualification from driving by a court of law or an interim driving ban where the employee's work necessitates the employee to hold a current full driving licence.
- Unauthorised disclosure of privileged or confidential information including customer & product information.
- Working in competition with the Lothian Group.
- Breach of trust/confidence which adversely affects the working relationship of the individual and Lothian Group.
- Grossly indecent or immoral behaviour.

5.1. These lists are not intended to be exhaustive and there may be other offences that will be treated as misconduct or gross misconduct and result in dismissal without previous warnings being given.

## 5.2. **Drivers Only**

The disciplinary process for Drivers' is split into two distinct categories:

- One for conduct (as every other employee) and;
- One for 'driving standards'.

The investigating Manager will decide which category it falls into on completion of the investigation. This means that for Drivers there can be two disciplinary records running concurrently.

'Driving Standards' is defined as:

- Operating your vehicle within the law and in accordance with the Highway Code.
- In adherence to your driver training and with cognisance to prevailing road or weather conditions.
- With consideration for your own safety and that of other road users and your passengers.

### 5.3. PCV Licence holders

The Lothian Group is required to report any instances of serious misconduct to the Traffic Commissioner. Examples include criminal convictions, road traffic violations, licence issues, illegal use of mobile phones, theft, violence or any conduct that brings an individual and the Lothian Group into disrepute. The Traffic Commissioner may require the employee to attend a conduct hearing in respect of this matter. Employees are required to report back to their manager the outcome of any such hearing without delay. The Lothian Group will continue to deal with reportable cases under the disciplinary policy and procedure. Should an employee resign prior to disciplinary, the matter may still be reported to the Traffic Commissioner.

## 6. Disciplinary Action – Informal & Formal

6.1. The following disciplinary action may be taken at the conclusion of the disciplinary hearing:

Informal Action	
No formal action taken	Conversation
No formal action, but areas of concern apparent, therefore a <b>file note</b> detailing concerns to be issued and a copy to be retained on the employee file	Copy on the employee file/ written down as an advised and discussed
Disciplinary Action – Formal	
First Written Warning	6 months
Final Written Warning	12 months
Actions Short of Dismissal (e.g. demotion, transfer)	
Dismissal/ Summary Dismissal – with or without notice	

6.2. Disciplinary action can be invoked at any stage of the process depending on the nature of the misconduct concerned and the seriousness of the case.

6.3. Performance warnings can be used instead of a disciplinary warning. If during the course of a disciplinary interview it appears that the suspected misconduct is in fact the result of a performance issue then please refer to the managing performance policy.

6.4. Where an employee commits further conduct offences whilst a warning is 'live,' it may be appropriate to progress them to the next level of the disciplinary process.

6.5. Where an employee is on a specialist rota and they are issued with a first or final written warning, they may be removed from the rota.

- 6.6. Where an employee is on a final written warning and fails to improve to the required standards or commits further acts of misconduct whether related to the previous incident or not, they may be dismissed for Misconduct with pay in lieu of notice.
- 6.7. If for any reason due to illness an employee is unable to attend a meeting, they will have the opportunity to submit their response in writing and this will be considered alongside any other supporting documents in the case. If the employee does not submit their response in writing, then they must understand that the meeting will still go ahead and a decision will be made with what evidence and supporting documents the Manager has.
- 6.8. If the outcome of disciplinary action is demotion, then this will be applied with the employee's agreement. If the employee does not want to consider this then formal proceedings should continue.
- 6.9. If an employee is absent long-term (for 28 days or more) during a live disciplinary warning, this warning should be paused for the duration of the absence and resumed upon the employee's return to work. For example, an employee has a first written warning for six months and, after four months, they are absent for three months. Upon their return to work the warning should be extended for up to two months. This means that the first written warning is live, while the employee is in work, for the full period of six months. Manager discretion may be applied in exceptional circumstances.

## 7. Suspension

- 7.1. Where deemed necessary by a Line Manager / Supervisor an employee could be suspended on full pay. Suspension is not a punishment, but part of the investigation process in the disciplinary procedure to allow the investigation to be conducted without influence or interruption from the employee. Employees can also be suspended for medical or health and safety reasons.
- 7.2. If a decision has to be made out of office hours the most senior Manager or Supervisor on duty will make the decision.
- 7.3. Details will be provided regarding the terms and conditions that must be adhered to during a period of suspension. An employee must:
  - Remain contactable at all times during business hours of 9am to 5pm.

- Remain available to attend meetings during their normal working hours. Reasonable exceptions will be made for employees who work a nightshift or a backshift.
- Refrain from entering any Lothian Group premises, unless given prior authorisation or to meet with their union representative.
- Refrain from discussing the suspension with any Lothian Group employee (except in exceptional circumstances where the employee is a family member), sub-contractor, supplier or customer unless authorised to do so.
- Not disclose any confidential information as per terms and conditions of employment.
- Any pre-planned, authorised annual leave arising during the suspension period will be honoured and paid as holiday leave.

7.4. Failure to comply with the above may result in further disciplinary action being taken.

## 8. Confidentiality

- 8.1. The business aims, during an investigation or disciplinary procedure, to deal with matters sensitively and with respect for the employee's privacy. All employees must treat as confidential any information communicated to them in connection with an investigation or disciplinary matter.
- 8.2. Neither party is permitted to take any electronic recordings of any investigative meetings, disciplinary or appeal hearings without prior consent of both parties.
- 8.3. An employee will normally be told the names of any witnesses whose evidence is relevant to disciplinary proceedings against them unless the witness wishes to remain anonymous. The witness must accept however that in remaining anonymous the disciplinary may be halted.
- 8.4. Under the terms of the Lothian Group whistleblowing policy we believe that a witness' identity should remain confidential. Witnesses and trade union representatives must treat as confidential any information given to them in the course of an investigation, including the identity of any employees under investigation.

## 9. Informal Meeting

- 9.1. The business recognises that there are instances where concerns about an employee's conduct can be resolved informally especially where it is minor. An informal meeting is often all that is required to improve an employee's conduct. When this is the case, the Line Manager should talk to the employee in private. This should be a two-way discussion aimed at discussing possible shortcomings in conduct and encouraging improvement. The emphasis should be on finding ways for the employee to improve and for the improvement to be sustained. The meeting should be conducted in an informal and supportive manner. A record of this conversation should be made in the employee's file.
- 9.2. Notes of any informal action / conversations should be taken for reference purposes. It may be appropriate for reviews of progress over specified periods to be established. In some cases, additional training, coaching and support may be required. A copy of any notes taken to record conversations such as these should be given to the employee.
- 9.3. If following informal discussion, should the employee fail to improve or if there are further concerns regarding their conduct, it may be necessary to commence to the formal disciplinary procedure.

## 10. Investigation Meeting

- 10.1. When a situation arises which causes concern an investigation meeting will be held to establish the facts of the case. It is important that the business conducts any investigations without unreasonable delay from the point they became aware of the issue.
  - Where possible an employee should be given notice of an investigatory meeting and advised of the reasons for this, however on occasions there may be situations where the severity of the matter requires immediate investigation. This investigation should be done during the employee's working hours, wherever possible. Reasonable exceptions will be made for employees who work a nightshift or a backshift.
  - Employees do not have the right to be accompanied to an investigatory meeting, however in exceptional circumstances, where agreed between management and the employee, this may be granted.
  - It is the responsibility of the employee to ensure they are able to attend this meeting.

- At the meeting the Investigating Manager will explain the purpose of the meeting and what their role is.
- The Investigating Manager should detail to the employee the cause of concern and ask them to explain the situation in their own words and also take the opportunity to highlight to the Investigating Manager any witnesses relevant to the case.
- At the end of the meeting the Investigating Manager may have to conduct further investigations with other relevant parties. It may be necessary to come back to the employee at a later date with further questions based on new information being obtained.
- On occasions it may be necessary for witness statements to be made anonymous. The reasons for this will be fully explained to the employee under investigation.
- Once a full investigation has been conducted the Investigating Manager should determine if the case warrants a disciplinary hearing.
- Notes should be taken at the meeting and a copy provided to the individual.
- If the case does not warrant a disciplinary hearing, the employee should be advised of this in writing or by conversation from the Investigating Manager with the reasoning clearly explained at the earliest opportunity. The same applies if there is a case to be answered to.

## **11. Third-Party Feedback and Accident & Investigation Forms (Drivers only)**

11.1. In many cases relating to customer complaints and driving standard/incidents it may not be practical or necessary to invite the Driver to attend a face-to-face investigation meeting. For customer complaints the Driver will be given a Third-Party Feedback form and for a driving standard/incident they will be given an Accident & Investigation Form. The Driver should complete and return the relevant form within 24 hours; failing this the investigation process will continue with the information available. The information provided by the Driver alongside the relevant CCTV will form the basis of the investigation, upon which a decision will be made as follows:

- No further action. In this case the Line Manager will notify the Driver that no formal action will be taken but may provide some informal feedback or advice to encourage improvement.

- Further investigation. In more complex cases it may be necessary to gather further evidence through witness statements and a face-to-face investigation meeting with the Driver. In this case the Line Manager will inform the Driver that an Investigating Manager has been appointed to conduct the investigation.
- Formal disciplinary proceedings. Where the Line Manager finds that disciplinary action is appropriate based on the relevant form and CCTV, the Driver will be invited to attend a formal disciplinary hearing chaired by the same or another Line Manager, depending on availability.

## 12. Disciplinary Hearing

12.1. Disciplinary action should only be considered once a clear picture of the matter has been established and an investigation has been conducted. If it is established that there is a disciplinary case to answer the following process should be followed:

- In cases of misconduct, the disciplinary hearing will be heard by another Manager of the same level or a more Senior Manager, independent of the person who conducted the investigation.
- The employee should be invited to attend a disciplinary hearing in writing and must be given a minimum of 48 hours' notice. This meeting should take place during the employees' working hours, wherever possible. Reasonable exceptions will be made for employees who work a nightshift or a backshift.
- This letter should clearly state the reasons for the hearing, as well as the date, time, location and right to representation.
- The letter will contain copies of all of the evidence the Disciplinary Manager intends to rely on.
- An employee has the right to be accompanied to a disciplinary hearing by a fellow colleague or trade union representative.
- The hearing should be arranged without unreasonable delay but allow the employee reasonable time to prepare their case (a minimum of 48 hours after the employee receiving the disciplinary invite would be reasonable). If the employee waives their right to have

reasonable time to prepare, the Disciplinary Hearing Manager may proceed if they have fully prepared for the hearing and this will be captured in the notes taken at the meeting.

- It is the responsibility of the employee to arrange representation for the hearing.
- Employees and their companion must make every effort to attend the hearing.
- Failure to attend a rescheduled hearing may result in the hearing being held in the employee's absence. The employee will receive the outcome of the hearing in writing.
- If on suspension employees should attend any meetings appropriately dressed in the event of an immediate return to duties.
- At the hearing the Hearing Manager will introduce all parties present and their roles in the hearing.
- All parties are expected to behave in a professional manner at the hearing. The Disciplinary Hearing Manager has the right to adjourn the hearing if any of the parties' behaviour becomes disruptive.
- The Disciplinary Hearing Manager will explain the allegations and present the evidence to the employee. The employee will be allowed to present their case and answer any allegations which have been made.
- Should new evidence be raised at the hearing the Disciplinary Hearing Manager can adjourn so further investigation can be done. The hearing will be reconvened once this has been completed. In this instance the employee will have an opportunity to view any further evidence which has been collected and comment on this.
- If following on from the investigation meeting the employee has a new witness or witnesses relevant to the case then the hearing can be adjourned to allow the Disciplinary Hearing Manager the opportunity to speak with the witness or witnesses.
- During the hearing either party can request an adjournment for a short break if required.
- Only once the Disciplinary Hearing Manager is satisfied that the case has been fully reviewed and discussed should they adjourn to make a decision.

- During the adjournment the full facts of the case should be reviewed prior to deciding if any disciplinary action is warranted.
- Whilst an adjournment should not be unnecessarily lengthy it should take as long as is required and sufficient time given to reach a decision. In the event that the decision may take longer than an hour and it is not possible to do this on the day, the hearing will be reconvened on another date but without delay.
- Any disciplinary outcome should be confirmed where possible at the end of the hearing by the Disciplinary Hearing Manager and followed up in writing to the employee. This letter should explain the nature of the misconduct along with the outcome of the disciplinary and advise the employee of their right to appeal and who will hear the appeal.
- Unless there are exceptional circumstances, complaints from the public/an external source must be investigated and a hearing held (where appropriate) within 28 days of the complaint being received by the company, or within 28 days of the manager being informed of an internal incident/matter. It is accepted that it may take longer than 28 days to conclude the process entirely, where appeals are lodged and heard.
- Where no disciplinary action is to be taken the reasons for this should be confirmed, if possible, at the end of the hearing and followed up in writing to the employee.

**Disciplinary action does not need to be taken simply because a hearing has been held.**

## 13. Appeal Process

**There are 2 stages in the appeals process.**

13.1. An employee has the right of appeal against any disciplinary action taken. The right of appeal and who will hear the appeal will be confirmed in writing in the outcome letter from the disciplinary hearing. Any appeal should be made to the Manager appointed to hear the appeal within 7 calendar days of receipt of the disciplinary outcome letter.

13.2. An appeal should be put in writing clearly stating the reasons and points of appeal, based on either:

- The severity of the warning
- Failure in process, or

- Production of new evidence.

13.3. It is not acceptable to simply state the grounds e.g. severity without sufficient explanation. In such case an Appeal Hearing Manager will ask the employee to provide further information within 24 hours; failing this the appeal may be rejected.

13.4. To ensure an efficient and comprehensive appeal process, all known grounds for appeal should be presented at the first stage. For example, if an employee has knowledge and reason to appeal an outcome based on severity and process, both should be presented at the first hearing.

13.5. Where an appeal is not upheld or partially upheld, the employee has a second and final right of appeal however this must be based on new information not already heard at the first appeal. For example, if an appeal on severity is not upheld at the first appeal, the employee may appeal on severity again, provided this is based on different grounds not already heard at the first appeal.

13.6. An appeal hearing will be held by either another Manager of the same level or a more Senior Manager, where possible, independent of the person who conducted the disciplinary hearing, as applicable.

13.7. In the event of a dismissal, the final appeal stage will be held by a more Senior Manager, where possible.

**13.8. The Appeal Hearing:**

- Should be arranged without delay and where practicable should take place usually within 14 calendar days of receipt of the appeal letter to the Appeal Hearing Manager.
- An employee is entitled to be accompanied to the appeal hearing by either a work colleague or a trade union representative. It is the responsibility of the employee to arrange representation.
- During the appeal hearing the employee will present their case for appeal to the Appeal Hearing Manager.
- The Appeal Hearing Manager will then ask any relevant questions regarding the matter.

- If necessary, the Appeal Hearing Manager can adjourn the hearing and conduct further investigations into the case. This adjournment must be without delay.
- The Appeal Hearing Manager will respond to the employee where practicable within 14 calendar days of the hearing in writing confirming the outcome of the appeal hearing. Should it be necessary to extend this timescale, the employee will be advised of this.
- Should an appeal be successful in the event of dismissal an employee's full terms and conditions would be reinstated from the day of dismissal, including basic pay and ensuring continuity of service so that the employee faces no financial detriment.
- Appeals should ideally be held at the colleagues usual location of work
- To ensure impartiality and fairness, at either 1<sup>st</sup> stage or 2<sup>nd</sup> stage appeal, the Appeal Hearing Manager should be from an alternative location of the business, separate from the original decision-making site.

## 14. Role of a Companion

14.1. An employee may be accompanied to disciplinary and appeal hearing by a work colleague or a trade union representative. A trade union representative who is not an employed official must have been certified by their union as being competent to accompany an employee.

14.2. Where the Appeal Hearing Manager believes the chosen companion may present a conflict of interest to the hearing, they reserve the right to decline this companion clearly stating the reasons for this. In these circumstances the employee can select another companion should they wish. Examples such as this could be where the chosen companion is a family member or could be part of the disciplinary process themselves.

14.3. The companion can confer with the employee and seek clarification on points for the employee. They are not permitted to answer questions on the employee's behalf or address the hearing if the employee does not want them to. A companion should not prevent the business from explaining their case. Should this happen, the hearing may be adjourned and the companion may be asked to leave the hearing.

14.4. There is no obligation for anyone to act as a companion if they do not wish to.

14.5. Under no circumstance should a companion or trade union representative receive copies of the employee's disciplinary letters or notes. If the employee wishes to provide these documents it is the responsibility of the employee to do so.

14.6. It is the responsibility of the employee to arrange their representative's attendance for the hearing. Failure to arrange representation may result in the hearing being held without a representative present. Hearings should always be arranged during the times when representation is available.

## 15. Grievance & Disciplinary Matters

15.1. In situations where an employee raises a grievance whilst in the disciplinary process there is no obligation to halt the disciplinary proceedings whilst the grievance is investigated.

15.2. If upon reviewing the grievance, it is found to be related to the disciplinary action, a decision on the appropriate course of action should be made by the Manager with the support of HR. In certain circumstances it may be appropriate to temporarily suspend the disciplinary process in order to deal with the grievance.

15.3. Where the grievance is related to the disciplinary matter then the two processes will be run concurrently.

## 16. Linked Policies

- Managing Performance Policy
- Grievance Policy
- Attendance at Work Policy
- Probationary Period Policy
- Diversity & Inclusion Policy
- Dress & Uniform Policy
- Social Media Policy

## 17. Version Control

Version No.	Date of Change	Change made by:	Key Amendments
V1.0	09/12/2019	D Nicolson	Published
V2.0	17/09/2021	S Murphy	Section 12 re 28 days rule
V3.0	06/01/2022	T Bork	Minor change to 1.3; update to 6.1; insert 6.7
V4.0	08/09/2022	T Bork	Changes made to sick pay rules and removal from specialist rota
V5.0	21/02/2024	G Everitt	Minor change to 13.3 re Appeal Manager Addition of appendix 13.4
V6.0	02/12/2024	P Jardine	Amendment to 5.2: added definition of Driving Standards.
V7.0	March 2026	H Devereux	Amendment to 5: to reference an interim driving disqualification; amendment to 5.3 on TC reportable matters; addition of 6.9 on paused warnings during long-term absence; amendment to 7.3 on availability during suspension; removal of 9.4 (repetition of 8.2); amendment to 10.1 on availability to attend meetings for night/backshift employees; amendment to 11 to clarify procedure; amendments to 13 on the appeal process and grounds for appeal; other minor changes to terminology and spelling.

**This policy may be varied from time to time in accordance with business and legislative requirements.**