

## Disciplinary

- 2.72 This information will help and encourage individuals to achieve and maintain acceptable standards of conduct at work, provide a framework to ensure consistent and fair treatment of all staff; and protect our interests. The policy incorporates time limits into each part of the disciplinary process so that matters are resolved as quickly as possible. We may change these time limits where necessary. We will explain any change to you. We may also begin disciplinary proceedings at any stage of the policy and skip stages of the policy depending on the seriousness of the alleged offence.
- 2.73 All correspondence and records of disciplinary matters are confidential. Appropriate members of management will be made aware of disciplinary matters. There may be other occasions where it is appropriate to disclose disciplinary records, e.g. for employee references, Court or Tribunal proceedings. You, and anyone accompanying you (including witnesses), must not make electronic recordings of any meetings or hearings conducted under this procedure. You will normally be told the names of any witnesses whose evidence is relevant to your disciplinary hearing, unless we believe that a witness's identity should remain confidential.
- 2.74 Where appropriate, we will try to resolve any disciplinary matters informally. This will be appropriate for minor lapses of acceptable standards of conduct, including single incidents of low level rudeness, lateness, general conduct or performance. However this will not be appropriate for serious misconduct issues or matters such as allegations of bullying, harassment or discrimination.
- 2.75 Your manager will first investigate the matter and then, if they decide an informal meeting is appropriate, will invite you to a meeting where the matter will be discussed and considered further. If, following the meeting, the manager feels an informal warning is appropriate, s/he will highlight the unacceptable standard of conduct and provide clear instructions on the improvements required within a prescribed timetable. Your manager should also tell you that failure to comply with this instruction could lead to formal disciplinary action. Your manager will take a record of the discussion. A copy of these notes will be given to you (usually within 7 days of the meeting).
- 2.76 Where the incidence of misconduct is such that the informal procedure is inappropriate, or where informal resolution has not been successful, the formal procedure will be used. In the first instance the matter will be properly investigated. We will ensure that you know the nature of the complaint against you and you will be given the opportunity to have your say before any decision is made.
- 2.77 We recognise three types of misconduct: Misconduct, Serious Misconduct and Gross Misconduct. It is not possible to list all types of misconduct capable of meriting formal disciplinary action as each situation depends on its own circumstances. However, acts of misconduct could include (list is non exhaustive):

<b>Misconduct</b>	<b>Serious and Gross Misconduct</b> It is in our discretion to decide what amounts to serious
<ul style="list-style-type: none"> <li>• failure to comply with instructions following an attempt at informal resolution;</li> <li>• consistent lateness or poor time keeping;</li> </ul>	<ul style="list-style-type: none"> <li>• theft, fraud and deliberate falsification of records;</li> <li>• physical violence;</li> <li>• serious harassment, bullying or victimisation;</li> </ul>

<ul style="list-style-type: none"> <li>• absenteeism (including unauthorised leave or overstaying leave)</li> <li>• abuse of flexitime or workplace flexibilities</li> <li>• abusive language or behaviour;</li> <li>• disobedience or a refusal to obey a reasonable and lawful instruction;</li> <li>• flaunting our rules/working practices (e.g. on drinking, smoking and health &amp; safety);</li> <li>• poor performance following reviews under the performance procedures;</li> <li>• minor incidents of inappropriate language or behaviour (minor in the view of the person harassed/bullied or victimised);</li> <li>• misuse (but not serious misuse) of our facilities including telephones (and mobile phones), e-mail and internet and any other our equipment; or</li> <li>• failure to report the individual's own wrongdoing or misconduct, or any actual or proposed wrongdoing or misconduct of any other employee.</li> </ul>	<ul style="list-style-type: none"> <li>• deliberate damage to property;</li> <li>• serious insubordination;</li> <li>• misuse of our property, including telephone/mobiles, e-mail and internet</li> <li>• bringing us and our name into disrepute;</li> <li>• carrying out work which conflicts with our business without our prior written permission;</li> <li>• serious incapacity whilst on duty due to, e.g., alcohol or illegal drugs;</li> <li>• serious negligence which causes or might cause unacceptable loss, damage or injury;</li> <li>• serious infringement of our rules and working practices, including our health &amp; safety rules;</li> <li>• serious breach of confidence (although your rights under the Public Interest (Disclosure) Act 1998 are not affected);</li> <li>• a criminal offence, which may, whether it is committed during or outside your hours of work, adversely affect our reputation or your suitability for the type of work we employ you to perform; or</li> <li>• failure to report your own serious wrongdoing or misconduct, or any actual or proposed serious wrongdoing or misconduct of any other employee or director.</li> </ul>
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## Investigation

- 2.78 Before any action is taken, the manager or an appointed Investigating Officer will conduct appropriate investigations at the earliest opportunity to try to find out what happened. It may be necessary for the person investigating the matter to take statements from the relevant witnesses. The witnesses should sign and date these statements as a true record. They should not discuss the contents of the statements with other individuals. Rather than each person interviewed providing a statement, the person investigating the matter may decide instead that his/her own summary of discussions during investigatory meetings provide an adequate record of what is said. The person investigating the matter will collate relevant documents and it is their responsibility to ensure a full and accurate summary.
- 2.79 The investigation will normally be completed within a 2 week period. If there are exceptional circumstances which mean that the investigation will take longer to complete you will be kept informed of progress and likely timescales. The person conducting the investigation will, following the investigation, decide whether or not the matter should proceed to a disciplinary hearing. If it is decided that disciplinary action is not appropriate, this will be discussed with you. If the decision is to hold a disciplinary hearing, you will, wherever possible (in rare circumstances it may not be possible. For example, if the allegation contains highly confidential information related to criminal allegations, or if the release of the information would constitute a data protection security breach), be told in writing the nature of the allegation or complaint against you and the evidence collected. This will usually be at least 7 calendar days before the disciplinary hearing takes place.

## **Suspension**

- 2.80 Where we have strong reason to believe that you could have been responsible for an act of misconduct, we may decide you should not be permitted to continue to attend work. If so, we are entitled to suspend you from duty pending an investigation and a possible disciplinary hearing. Suspensions must be approved by the Chief Executive and will not prejudice the outcome of the investigation. We will look for an alternative to suspension, such as redeployment, where this is appropriate.
- 2.81 The suspension will be reviewed on a regular basis and you will be kept informed of the progress of the investigation and probable timescales. Welfare support will be offered to the individual at the time of suspension and beyond. Whilst suspended you will be excluded from OPCC premises and systems and should not have contact with work colleagues without prior permission. You may attend meetings with your staff association/trade union representatives. Access to work related social and/or sporting events will be subject to approval by the Chief Executive.
- 2.82 Occupational Health support will be made available, to offer you psychological support during suspension. Ongoing Medical and Psychological support will be offered, if required, following your return to work. Where appropriate and in exceptional cases this support can be extended to your family members. You will receive your full pay throughout the period of suspension. If you are sick during a period of suspension you must notify us in the normal way and we will be entitled to pay you sick pay rather than normal pay for the duration of sickness irrespective of the duration of suspension or whether the suspension is lifted. If you have annual leave booked which falls during the time you are suspended, this will be considered annual leave.

## **Formal Disciplinary Hearing**

- 2.83 Once the matter has been properly investigated, we may deem it appropriate to hold a formal disciplinary hearing. We will not take formal disciplinary action without first inviting you to a prior disciplinary hearing, except in very urgent situations. The disciplinary hearing will be heard by a panel comprising of the Deputy Chief Executive or their nominated deputy, and a further senior member of staff. The Chair has complete discretion on how to run the hearing, including deciding on whether or not to call witnesses or the investigating officer. The Chair should assess the investigation and be confident that the investigation was undertaken fairly and accurately. A note-taker should be present at the hearing. The hearing has three functions:
- 1) to decide whether there was misconduct.
  - 2) if there was misconduct, to determine its severity (misconduct, serious misconduct or gross misconduct)
  - 3) if misconduct is found, to impose a sanction.
- 2.84 Wherever possible, you will be notified of the time, date and location of the hearing at least 7 calendar days beforehand. The notification will include a summary of the nature of the misconduct and of the results of the investigation and a warning of the possible outcome of the hearing. It is up to you to let us know of any good reason why you cannot attend a disciplinary hearing. If you do not attend, we reserve the right to proceed with the hearing in your absence. Hearings may be delayed once by up to 7 calendar days if your work colleague, trade union official or certified trade union representative is unavailable to attend on the date of the scheduled hearing. If you fail to attend without good reason, or are persistently unable to do so (for example, for due to a chronic health condition), we may have to take a decision based on the available evidence.

- 2.85 If either party is to rely on any documentation to be used at the hearing, for example any witness statements or summary of witness statements, such documents must be provided to the Chair of the Panel in good time before the date of the hearing, and will be shared with the other party. Witnesses may be questioned at the hearing, although the Chair has the right to refuse this where impractical or inappropriate.
- 2.86 You have the right to be accompanied to the hearing by a work colleague, trade union official or certified trade union representative. You must tell the Chair who your chosen companion is, in good time before the hearing. A companion is allowed reasonable time off from duties without loss of pay but no-one is obliged to act as a companion if they do not wish to do so. If your choice of companion is unreasonable we may require you to choose someone else, for example:
- a. if in our opinion your companion may have a conflict of interest or may prejudice the hearing; or
  - b. if your companion is unavailable at the time a hearing is scheduled and will not be available for more than 7 calendar days.
- 2.87 We may, at our discretion, allow you to bring a companion who is not a colleague or union representative (for example, a member of your family) where this will help overcome a particular difficulty caused by a disability, or where you have difficulty understanding English. Your companion may make representations, ask questions, and sum up your case, but will not be allowed to answer questions on your behalf. You may confer privately with your companion at any time during the hearing.

### **Outcome following a Disciplinary Hearing**

- 2.88 Following a disciplinary hearing, we will decide what action to take (if any), allowing for the nature of the offence, the statements and answers provided by you or any witnesses, your current disciplinary record and other factors such as health or length of service.
- 2.89 You may be told the decision at the end of the hearing (possibly after an adjournment), although it will be confirmed in writing.
- 2.90 The following table provides an indication of the disciplinary steps which may be taken and how long they will apply for:

	1st Occasion	2nd Occasion	3rd Occasion
Misconduct	Oral warning (6 months)	Final written warning (12 months)	Dismissal
Serious misconduct	Final written warning (12 months)	Dismissal	
Gross misconduct	Dismissal		

This is a guide only and may vary with the circumstances, for example:

- A further act of misconduct which occurs while a disciplinary warning is in force (whether or not the misconduct is the same as that which gave rise to the warning), will entitle us either to extend the period of warning on file or to invoke new disciplinary procedures, following which the next disciplinary sanction may be deemed appropriate. If it involves serious misconduct, we are entitled to impose

a more severe penalty than the next one set out in the table, e.g. from an oral warning to a final written warning.

- If there is an incidence or pattern of misconduct (e.g. absenteeism) which occurs after the end or lapse of a previous period of disciplinary warning, we will be entitled to impose a more severe penalty than the misconduct might otherwise merit.
- We may impose the disciplinary penalty which we consider appropriate in the circumstances (you will not be dismissed for a first offence, other than for gross misconduct or gross negligence).

2.91 If, following an investigation and a disciplinary hearing, we decide that you have committed an act of gross misconduct, we may dismiss you immediately without notice or payment instead of notice. If you are dismissed for a matter other than gross misconduct, you are entitled to be given the relevant contractual notice of the dismissal.

### **Disciplinary Appeal**

2.92 You may appeal against a disciplinary finding, or the severity or the penalty. Appeals should be presented in writing to the Chief Executive. The reasons for the appeal must outline the nature of the perceived inadequacies of the decision. We will nominate an appropriate senior person to hold the appeal hearing. Where possible, this will not be someone who was involved in the original decision or disciplinary process. They have complete discretion on how to run the hearing.

2.93 You may invite a companion on the same basis of that for the disciplinary hearing. Appeals will usually be heard within 7 calendar days of receiving the notice of the appeal. Any further documentation should be exchanged at least 2 days before the appeal hearing.

2.94 The outcome of the appeal hearing, together with the reasons for the decision, will be given in writing as soon as possible after the hearing. The person holding the appeal hearing will have authority to confirm or overturn the original decision, or to decide on a different outcome. The appeal hearing decision is final and you do not have any further right of appeal against our decision.

### **If you leave your post**

2.95 If your contract with us ends during a disciplinary process, because you retire or resign, or your contract period comes to an end, then the disciplinary process will end too and no further action will be taken. However, the Chief Executive may decide that the case will "lie on file", meaning that consideration could resume, at the discretion of the Chief Executive, should you return to a post with us. If you have been subject to immediate dismissal or dismissed as a result of gross misconduct with immediate effect, then the appeal process can take place after you have left the organisation, and, if the appeal finds in your favour, you may be reappointed and any lost wages repaid.

2.96 Employment references provided by us after you leave our employment will include information about disciplinary findings. This will be limited to a statement to say that you were subject to disciplinary action, and what sanction was imposed.