

DISCIPLINARY POLICY

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REVIEWERS

This document has been reviewed by:

NAME	DATE	TITLE/RESPONSIBILITY	VERSION
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APPROVALS

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NB: The version of this policy posted on the intranet must be a PDF copy of the approved version.

DOCUMENT STATUS

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RELATED DOCUMENTS

These documents will provide additional information:

REFERENCE NUMBER	DOCUMENT TITLE	VERSION

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1.0 POLICY OVERVIEW

1.1 Purpose

In order to operate effectively, high standards of performance and conduct are expected from all employees in line with our organisational values. Cases of minor misconduct or unsatisfactory behaviour are usually best dealt with informally. This policy is designed to resolve issues and aims to ensure that where some form of formal action is needed, issues are dealt with promptly, fairly and consistently.

1.2 Who this Policy applies to

The policy applies to all staff that are employees of the organisation in either a permanent, fixed term or temporary post with the exception of agency staff.

1.3 Key Principles

- Managers and employees must raise and deal with issues promptly and must not unreasonable delay meetings, decisions or confirmation of those decisions.
- Informal action will be considered, where appropriate, to resolve problems and minor conduct issues in the first instance.
- In cases where formal action is necessary, the employee will be advised of the nature of the reason and allegations against him or her (where allegations apply) and will be given the opportunity to state his or her case before any decision is made at a disciplinary hearing.
- Employees will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary hearing.
- Employees are provided the opportunity to appeal any formal decisions made through this process.
- This Policy extends to conduct of employees using social media and other publicly accessible forums. The policy may be invoked when an employee has, or is perceived to have published inappropriate, offensive or abusive material which could be linked to the CCG in any way. This extends to cyber bullying and “trolling”. Guidance is available to employees on acceptable online behaviours via the CCG Social Media Tone of Voice guidance.
- The disciplinary procedure may be implemented at any stage of employment with the CCG where the alleged misconduct warrants
- The CCG and employees must act consistently in line with this policy.
- The CCG will apply the principles and procedure outlined in this policy in a fair and consistent way, ensuring that the established facts are fairly considered to conclude an outcome.
- Where issues of misconduct cannot be resolved informally or it is inappropriate to do so, the formal disciplinary procedure will be invoked

- In cases where gross misconduct is alleged, the disciplinary process will be expedited in order to deal with the matter promptly without any unreasonable delay
- Upon discussion with HR, management should decide if the alleged misconduct should warrant suspension. Where this is necessary, HR should be present at the notice of suspension meeting.
- The CCG will appoint an independent investigating officer to conduct the fact finding investigation. The process should be supported by a HR professional.
- The independent investigating officer is not responsible for deciding on the remedial or disciplinary action following an investigation. This role is purely to independently gather and objectively consider the facts of the case, and produce a report to reflect these facts
- If upon conclusion of an investigation there is a case to answer, an independent panel (not previously involved in the case) shall be held to review the case and decide on the appropriate course of action. This is the disciplinary hearing.
- Management and employees should be aware that a potential outcome of any disciplinary hearing may be the termination of employment.
- Employees have the right to be accompanied at any formal disciplinary meetings with a recognised trade union representative or work place colleague.

1.4 Legal Considerations

The ACAS Code of Practice on disciplinary and grievance procedures sets out principles for handling disciplinary and grievance situations in the workplace. Employment tribunals are legally required to take the Code into account when considering relevant cases.

Most of the provisions governing unfair dismissal are to be found in the Employment Rights Act 1996 as amended. Numerous other pieces of legislation cross refer to unfair dismissal issues.

2.0 THE POLICY

2.1 Informal Discussions

Wherever possible, an initial discussion must be held between the employee and their manager. It is in everyone's best interest for an issue to be dealt with quickly and fairly at the earliest opportunity and it is likely that the majority of concerns will be resolved at this stage. The employee can be accompanied if they request it. The employee and the manager must keep a note of the discussion.

2.2 Being Accompanied

This policy gives employees the right to be accompanied by a companion at each formal stage of the process. The chosen companion may be a CCG employee or a recognised trade union representative not acting in a legal capacity.

Employees must make a reasonable request to be accompanied and what is reasonable will depend on the circumstances of each individual case. However, it would not normally be reasonable for workers to insist on being accompanied by a companion whose presence would prejudice the hearing. Nor would it be reasonable for the worker to delay proceedings because their chosen companion was not available within a reasonable time scale (usually within 5 days of the original meeting).

The companion should be allowed to address the hearing to put and sum up the employees case, respond on behalf of the employee to any views expressed at the hearing and confer with the employee during the hearing. The companion does not, however, have the right to answer questions on the employee's behalf, address the hearing if the worker does not wish it or prevent the employer from explaining their case.

2.3 Suspension

In cases where a period of suspension with pay is considered necessary, this period must be as brief as possible, must be kept under review and it must be made clear that suspension is not considered a disciplinary action nor an inference of guilt.

Suspension should always be the last resort and may be considered where;

- The conduct is of a serious enough nature that if proved may result in gross misconduct
- The individual may influence the investigation and therefore the fair outcome
- To protect the reputation of the individual and the organisation
- Where all other options have been considered, including redeployment and restriction of duties

The terms of suspension should be in writing and provided to the individual on the day of the suspension. All suspension will be without prejudice and with full pay.

2.4 Investigation

It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case, this should not take longer than 1 month. In exceptional circumstances, or where the case involves numerous parties the investigation process may take a longer period of time to conclude and the employee will be notified of the delay. In some cases this process will require the holding of an investigatory

meeting with the employee before proceeding to any disciplinary hearing. In others, the investigatory stage will be the collation of evidence by the employer for use at any disciplinary hearing. Depending on the case, it may be necessary to conduct meetings with potential witnesses as identified by the investigating officer.

Where an investigatory meeting is held, this must not by itself result in any disciplinary action against the employee.

It is best practice for the investigating officer to be supported through this process by a HR professional.

2.4.1 Formal Procedure

If, following the investigation and consideration of the facts and evidence it is concluded that there is a disciplinary case to answer, or not. This decision will normally be made by the line manager (not investigating the case); or an independent panel. The employee must be notified of this outcome in writing.

Where it is concluded to be a case to answer, the employee shall be notified that a disciplinary hearing shall take place, be provided with any evidence or management report produced as part of the investigation and be given the right to be accompanied to the hearing. The individual should be given the opportunity to respond to the investigation report and submit a response report to the panel and management side.

Where it is concluded that there is no case to answer, the employee shall be informed of this outcome in writing, and advised that there will be no further action taken, and a hearing shall not be arranged.

No sanction can be issued without a formal hearing being convened to consider the facts of the case. A disciplinary panel can decide to issue a first written warning, a final written warning, or dismiss on the grounds of conduct. When considering the type of sanction to issue the panel will consider:

- The information presented by management and staff side
- Any mitigation provided i.e. a very good record of conduct within the organisation
- The seriousness of the allegations
- The implications of the allegations on the organisation or individuals
- Any previous informal action to stop the conduct
- The circumstances surrounding the conduct or issue presented

The panel will provide reasons for the sanction issued, to the individual as part of the outcome letter.

2.4.2 Disciplinary Hearing

The hearing must be held without unreasonable delay upon conclusion of the investigation.

A disciplinary panel shall be appointed, with the Chair of the panel being a senior manager within the CCG, ideally the function of which the employee is based. The Chair shall be accompanied by a HR professional. The panel may also consist of a deputy chair and a further independent party where necessary in accordance with the authority level detailed below

Once a hearing date is confirmed, the employee should be informed in writing of the details of the hearing, including venue and panel members. The notification letter should contain

sufficient information about the alleged misconduct and its possible consequences to enable the employee to prepare to answer the case at a disciplinary hearing. This is referred to as the Staff Side Case.

It would normally be appropriate to provide copies of any written evidence, which may include any witness statements, to the employee prior to the hearing. This is referred to as the Management Case.

Management side and staff side (and their companions) must make every effort to attend the hearing; however the hearing can take place in the employees absence. It should be noted that the hearing process can run throughout the course of a full day, and therefore both management and staff side should ensure they are available to attend for the full duration of the meeting.

At the hearing the Panel should explain the complaint against the employee. The Panel will review the evidence provided by management, and consider the case submitted by staff side in order to conclude if disciplinary action is necessary, and what action to take.

The employee will be provided the opportunity to set out their case and respond to the allegations that have been made. The employee shall also be given a reasonable opportunity to ask questions, present evidence and call relevant witnesses. They must also be given an opportunity to raise points about any information provided by witnesses. Where the management, Panel or employee intends to call relevant witnesses they must give advance notice that they intend to do this, also ensuring that the potential witnesses are advised of the hearing date to be available (in person or telephone).

The Panel may then have questions for management and/or staff side to respond to. An adjournment will take place prior to a decision being communicated. This provides the Panel sufficient time to consider all the facts and the process undertaken and to deliberate if disciplinary action is warranted, and what action should be taken. In complex cases, the adjournment may carry over to another day.

2.4.3 Outcomes and Authority

Once both cases have been heard the panel will conclude whether or not disciplinary action is justified and inform the employee accordingly in writing.

The Panel decision should be communicated to all parties in person at the Hearing, or adjourned hearing if this was necessary. This will include the panel considerations and conclusion, and details of the disciplinary action. This outcome should also be formally communicated in writing to all parties, within 10 working days of the hearing.

If an employee's first misconduct or unsatisfactory performance is sufficiently serious, it may be appropriate to move directly to a final written warning. This might occur where the employee's actions have had, or are liable to have, a serious or harmful impact on the organisation.

A first or final written warning must set out the nature of the misconduct and the change in behaviour (with timescale). The employee must be told how long the warning will remain current. The employee must be informed of the consequences of further misconduct within the set period following a final warning. For instance that it may result in dismissal or some other contractual penalty such as demotion or loss of seniority.

A decision to dismiss must only be taken by a manager who has the authority to do so. The employee must be informed as soon as possible of the reasons for the dismissal, the date

on which the employment contract will end, the appropriate period of notice and their right of appeal.

Some acts, termed gross misconduct, are so serious in themselves or have such serious consequences that they may call for dismissal without notice for a first offence. A fair disciplinary process must always be followed, before dismissing for gross misconduct.

Examples of acts considered gross misconduct are listed below; however this list is not exhaustive:

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

Where an employee is persistently unable or unwilling to attend a disciplinary meeting or hearing without good cause the employer will make a decision on the evidence available.

Outcome	Panel	Length Live on File
First Written Warning	Head of Service and HR Professional	12 months
Final Written Warning	Head of Service and HR professional	18 months
Dismissal	Director, HR Professional and Independent manager	n/a
Appeal	All appeal panels must be comprised of individuals not already involved in the case. Director and HR Professional for First and Final Written warning Director, Independent manager and HR professional for Dismissal appeals	n/a

Where disciplinary action is being considered against a senior manager where there are no managers more senior that are independent consideration will be given to approaching regulator organisations or partner organisations to Chair a disciplinary panel to decide on appropriate sanctions

2.5 The right to appeal

Where an employee feels that disciplinary action taken against them is wrong or unjust they are able to appeal against the decision within 15 working days of the hearing. Appeals cannot be heard outside of these timeframes except in exceptional circumstances.

The employee's appeal should be submitted in writing to the appropriate individual, clearly outlining the grounds of their appeal.

Where there are legitimate grounds for an appeal, an appeal hearing should be held without unreasonable delay.

The appeal must be dealt with impartially, by a manager who has not previously been involved in the case. The appeal hearing should follow the same process as the disciplinary hearing outlined above.

Following an appeal the original decision may be confirmed, revoked or replaced with a different decision. The final decision will be confirmed in writing, within 10 working days of the appeal meeting. There will be no further right of appeal.

The date that any dismissal takes effect will not be delayed pending the outcome of an appeal. However, if the appeal is successful, the decision to dismiss will be revoked with no loss of continuity or pay.

2.6 Special cases

The same principles apply for Trade Union Representatives. However, if agreeable to the employee, early discussions with Trade Union Officials may take place in advance of a formal hearing.

If an employee is charged with, or convicted of a criminal offence, consideration needs to be given to what effect the charge or conviction has on the employee's suitability to do the job and their relationship with their employer, work colleagues and patients.

In cases where criminal allegations are made but the employee is yet to be charged consideration must be given to the suitability of suspension to protect both the individual and the organisation. Where a criminal investigation is likely to continue for a significant amount of time consideration should be given as to whether the reputational risk is too great to continue employment. In this scenario consideration may be given to termination of employment due to Some Other Substantial Reason (SOSR) instead of dismissal due to conduct.

2.7 Equality Statement

In applying this policy, the organisation will have a due regard for the need to eliminate unlawful discrimination, promote equality of opportunity and provide for good relations between people of diverse groups. In particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sexual orientation, in addition to offending background, trade union membership or any other personal characteristic.