

Disciplinary procedures

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This document sets out the disciplinary procedures which apply in the JNCC. Recognised disciplinary procedures provide a fair method of dealing with alleged offences at all grades of employee and are also intended to emphasise and encourage improvements in individual conduct. They should be used in a positive manner as a means of making improvements where possible, and should not be viewed solely as a means of imposing sanctions.

This procedure takes into account the procedures and practices recommended by the ACAS 'Code of Practice on Disciplinary and Grievance Procedures', and has been agreed with the Trade Unions.

Disciplinary cases may arise as a result of general or specific instances of deliberate misconduct, negligence, or as the result of failure to observe laid-down procedures.

Where the behaviour complained of concerns apparent shortcomings in performance rather than a matter of conduct, different procedures detailed in the 'Under Performance procedures' may be appropriate.

Where the matter relates to frequent short term absence due to a series of minor ailments, or to long term medical absence, please refer to 'Absence procedures'.

The treatment of disciplinary cases will depend upon the circumstances of each case. It is recommended that reference is made to any related policy prior to taking disciplinary action, e.g. for a breach in the smoking policy, 'Smoking in the Work Place' should be consulted.

Other policies with disciplinary implications

- Grievance policy
- Harassment policy
- Under-performance policy
- Attendance policy
- External email and internet policy
- Health and safety policy
- Probationary procedure
- Smoking in the workplace
- Data protection
- Whistleblowers policy (Word doc)

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Disciplinary procedures

The principles

There are basic principles which govern the way in which disciplinary problems are dealt with. These are:

- Employees should be made aware of the standards of conduct and behaviour which are expected of them, and the rules to which they are expected to conform;
- The employee should be given a clear indication of any inappropriate conduct;
- An employee has the right to be accompanied by a trade union representative or a work colleague of their choice during a disciplinary interview or hearing;
- All employees have the right to appeal against any disciplinary warning/penalty invoked against them;
- Except in cases of serious or gross misconduct, employees should be given the opportunity to improve before they are issued with a final written warning;
- No disciplinary action will be taken until the employee has had the opportunity of stating his/her case and the matter has been fully investigated;
- An employee will not be dismissed for a first breach of discipline, except in the case of gross misconduct when the outcome may be summary dismissal without notice or payment in lieu of notice;
- The content of disciplinary hearings and interviews will be treated as confidential.
- In the eventuality of an alleged offence by a Director, the matter will be referred to the Chairman.

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Disciplinary procedures

Procedure

Informal procedure for minor disciplinary offences
Formal disciplinary procedure
Disciplinary Interview
Formal Disciplinary Action
Disciplinary Hearing

When a disciplinary matter arises, the manager should first establish the facts promptly before recollections fade, and where appropriate obtain statements from any available witnesses. It is important to keep a record for later reference. Having investigated the facts, the manager should decide whether to:

- take no further action;
- deal with the matter informally; or
- arrange for the matter to be dealt with under the formal disciplinary procedure.

Informal procedure for minor disciplinary offences

The employee's line manager will normally handle minor disciplinary offences informally as matters of day to day management. In such cases a formal record should not be made except in cases where the offence continues (see below).

Examples of minor disciplinary offences could include:

- Minor breach of company policy;
- Minor breach of safety regulations;
- Minor abuse of the e-mail or telephone system;
- Minor failure to carry out reasonable instructions;
- Intermittent absences without good reason;
- Lateness and / or poor timekeeping.

(This list is to provide an indication of what might be deemed to be a minor disciplinary offence and is by no means exhaustive.)

If, however, there is no improvement, the employee should be warned that further misconduct could lead to the introduction of formal disciplinary procedures.

In such cases, a written statement should be provided to the employee, giving details of:

- the complaint;
- the improvement required;
- and the timescale within which it should be achieved.

Both the line manager and the employee should sign this statement and it will be placed on the employee's personal file.

It is important that line management monitor the individual's conduct after issuing such a statement and provide adequate feedback to the individual on his/her conduct.

If the required improvement is achieved, this should be recorded in writing and placed on the personal file.

Where there is disagreement between the employee and the manager relating to the circumstances of the offence, the details of this disagreement must be recorded.

This process should not be confused with any action under the formal disciplinary procedure and any meeting to discuss the situation **must not** turn into a disciplinary interview as this may unintentionally

deny the employee certain rights, such as the right to be accompanied.

Repetition of minor disciplinary offences or a failure to make the required improvement within the timescale indicated will generally lead to action under the formal disciplinary process, unless it is clear that any failure is due to circumstances beyond the individual's control, in which case the timescale for improvement should be extended and a note made on the employee's personal file to that effect.

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Formal disciplinary procedure

Misconduct is the term used for a breach of the company rules which does not in the first instance lead to dismissal (although if further misconduct takes place, it could do so).

Examples of misconduct that could give rise to disciplinary action include:

- Bullying or harassment (see policy on 'Harassment, Bullying & Victimisation');
- Smoking in prohibited areas (see 'Smoking the workplace');
- Breaches of Health and Safety rules, regulations or procedures;
- Failure to take care of JNCC property, equipment and material;
- Inappropriate use of JNCC property, equipment, materials and systems;
- Persistent lateness and/or poor timekeeping;
- Persistent absence without good reason;
- Deliberate misuse of the flexi-time system.

These examples are not exhaustive, or exclusive.

Gross misconduct is serious misconduct which may lead to summary dismissal (dismissal without notice) for the first offence. Examples of acts, which may constitute gross misconduct are:

- Theft, fraud and deliberate falsification of records;
- Physical violence;
- Serious bullying or harassment;
- Unlawful discrimination;
- Deliberate damage to property;
- Serious insubordination;
- Misuse of JNCC property or name;
- Bringing the JNCC into serious disrepute;
- Inability to perform one's role due to the influence of alcohol or non-prescribed drugs;
- Serious negligence which causes or might cause unacceptable loss, damage or injury;
- Serious infringement of health and safety regulations;
- Serious breach of confidence.

When it appears that an employee has committed an offence for which formal disciplinary action is appropriate, the first step will normally be to arrange a disciplinary interview. However, where a formal allegation of gross misconduct has been made against an employee, the process moves straight to Stage 3, where a disciplinary hearing will be required.

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Disciplinary Interview

The Manager must ensure that authorisation is sought from the Personnel section for the convening of a disciplinary interview and the following procedures are followed as promptly as possible.

The Line Manager should invite the employee in writing to attend a disciplinary interview. The employee should receive prior notice of the interview and be advised that they may seek the assistance of a work colleague or a representative of a Trades Union. The Line Manager will be accompanied at the interview by a nominated representative, which may be Personnel. If the suggested date and time are unsuitable, any alternative suggestion must be reasonable and must be within a period of five working days of the originally proposed date.

The employee will be informed in advance in writing of the nature of the complaint and such evidence as may exist. At the interview, the employee will have the opportunity to state their case and answer any allegations that have been made.

Following a disciplinary interview, if it is decided that formal disciplinary action should be taken, the employee will be told of the decision and later given a letter in confirmation.

Before making any decision, the Line Manager should seek advice from Personnel and ensure that: they take account of the employee's disciplinary and general record;

- their length of service;
- actions taken in any previous similar case;
- the explanations provided by the employee;
- and whether the intended disciplinary action is reasonable under the circumstances.

Disciplinary action as detailed below will normally apply, however certain stages may be omitted for a more serious offence or if a further offence occurs within the currency of a prior warning.

An employee has the right to appeal against any disciplinary warning/penalty and should do so within five working days of the outcome of any disciplinary interview or hearing (see Appeals process).

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Formal Disciplinary Action

The procedures for formal disciplinary action are summarised in the Disciplinary Flowchart. (Word Doc)

Stage One - First written warning

Where it is decided, following a disciplinary meeting, that disciplinary action should be taken, the usual first step would be to give the employee a first written warning. For a more serious offence, or if the offence occurs within the currency of a prior warning, the employee should be given a final written warning.

The warning will provide details of the complaint, the improvement or change in behaviour that is required, the timescale allowed for the improvement or change and the right of appeal. The employee should also be notified that failure to improve, or any repetition of misconduct, within the specified timescale, could lead to a final written warning and, subsequently, dismissal.

A copy of the warning will be retained on the personnel file but will be disregarded for disciplinary purposes after a specified period, generally 12 months.

Stage Two - Final written warning

Following a disciplinary meeting, where there is failure to improve or change behaviour in the timescale set at the first formal stage, or where the offence is sufficiently serious, the employee should be given a final written warning.

This warning should give details of the complaint, advise the employee that failure to improve or modify the behaviour may lead to dismissal, or to some other action short of dismissal, and confirm their right of appeal.

A copy of the warning will be retained on the personnel file but will be disregarded for disciplinary purposes after a specified period, generally 12 months.

Stage Three – Final Disciplinary Hearing and Action

If there is no improvement after two written warnings, or where a formal allegation of gross misconduct has been made against an employee, the employee will be invited to attend a disciplinary hearing.

The final decision to dismiss can be taken only by the Managing Director or, in his absence, by the Director of Resources and External Affairs, when they are satisfied with the facts of the case, the appropriateness of mitigating circumstances and after conducting a disciplinary hearing (see below) with the employee concerned.

Alternatives short of dismissal may be considered, which could include:

- Demotion / downgrading;
- Loss of seniority within grade;
- Loss of increment;
- Transfer to another post;
- Suspension without pay.

The employee should be informed as soon as possible of the reasons for the dismissal, the date on which their employment contract will terminate, the appropriate period of notice and their right of appeal.

Disciplinary Hearing

The Director of Resources and External Affairs, acting as the disciplinary officer, will normally deal with the case. He / she will be responsible for deciding whether the offence has been committed and what the appropriate action will be.

Investigation will take place prior to the hearing to establish as many of the relevant facts as possible. A written statement outlining the case to be answered will be presented to the employee at least 10 working days prior to the hearing. The employee can provide a written response to this statement if they wish. The employee will also be informed:

- That the hearing is a disciplinary one;
- Of their right to be accompanied by a trade union representative or a work colleague;
- Of the nature of the alleged offence;
- Of the date, time and place of the hearing.

The disciplinary panel will comprise of a least two but ideally three members, normally chaired by the Director of Resources and External Affairs. The panel will not normally include the employee's line manager. The employee will be informed in advance of those staff nominated for the panel and any reasonable request from the employee for a change will be considered if alternative suitable staff are available.

The employee may be represented by a work colleague or a trade union representative.

At the start of the hearing, the employee must be told who is attending and why, the purpose of the hearing, and how it will be conducted. The hearing will be conducted in such a manner as to allow the employee the opportunity to set out their case and answer any allegations that have been made. The employee will be allowed to ask questions, present evidence, call witnesses and be given an opportunity to raise points about any information provided by witnesses. No new complaint will be introduced at this stage.

Where a disciplinary panel has reason to believe that further material evidence may exist, which could have a bearing on the panel's decision, the hearing should be adjourned to allow time for the evidence to be presented.

Once a decision has been made, a formal report will be prepared and presented to the employee under investigation within 10 working days. The report will be accompanied by a note of any interviews and will identify any disciplinary action to be taken. The employee under investigation will have access to any documentary evidence that JNCC relies upon as the basis of its decision.

An employee has the right to appeal against any disciplinary penalty and should do so within five working days of receipt of the disciplinary report (see Appeals Process).

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Disciplinary procedures

Restitution following loss or damage of JNCC property

In cases where disciplinary action is taken against an employee, who has caused loss or damage to JNCC property through negligence, the JNCC may seek restitution in full or part.

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Disciplinary Procedures

Suspension

JNCC may suspend an employee for a short period during any disciplinary investigation. An employee will only be suspended in circumstances where:

- either the nature of the alleged offence could result in summary dismissal; or
- it is deemed necessary for the protection of other persons or public funds; or
- the continued presence of the employee, in the work situation, could obstruct the proper investigation of the alleged offence.

The suspension must be authorised by the Director of Resources and External Affairs, following consultation with the Head of Personnel.

During any suspension, an employee will continue to receive full pay, pension and annual leave entitlements.

The employee should receive confirmation in writing within two working days: -

- the reason for the suspension (brief details of alleged offence).
- the date and time from which the suspension was operative.
- the estimated duration of the suspension.

The employee must be notified in writing of any extension to this period. A decision to proceed or to revoke should be taken by Personnel in consultation with managers, normally within seven working days of the suspension date. If a decision in relation to next action is not taken within seven working days of the first suspension date the employee will have a right to make a written appeal against the continuation of a period of suspension.

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Disciplinary Procedures

Where a grievance is raised during a disciplinary procedure

If, during the disciplinary process, an employee raises a grievance that is related to the case, the Manager dealing with the disciplinary matter should consider suspending the process for a short period while the grievance is dealt with. Depending on the nature of the grievance, another Manager may need to be appointed to deal with the disciplinary process. Personnel should always be consulted in these circumstances.

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Disciplinary Procedures

Special Situations

If the full procedure is not immediately available

Special arrangements may be required for handling disciplinary matters for employees in isolated locations or employees who are difficult to reach.

Trade Union representative

Normal disciplinary procedures apply to members of staff who are trade union representatives. However, to guard against any suggestion that a disciplinary penalty is seen as an attack on the functions of the trade unions, there should be no disciplinary action until the matter has been discussed with a full-time official of the union. During any disciplinary procedure involving a trade union representative, they will be entitled to representation by a full-time official of the union.

Criminal offences

Criminal offences outside work should only give rise to disciplinary action if the offence makes the employee unsuitable in relation to his or her work. Once a decision has been made as to whether or not to proceed with disciplinary action, the matter should be referred to the Director of Resources and External Affairs for their consideration.

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Disciplinary Procedures

Keeping Records

It is important, and in the interests of both the JNCC and the employee, to keep written records during the disciplinary process. Records should include:-

- The nature of the complaint against the employee;
- Details of the employee's defence or any mitigating circumstances;
- Findings and action taken;
- Reasons behind any actions taken;
- Whether an appeal was lodged;
- The outcome of the appeal;
- Any subsequent developments.

Records will be treated as confidential and be kept in accordance with the Data Protection guidelines.

Copies of records made at disciplinary meetings / hearings will be available to the employee, although the JNCC may withhold certain information (for example to protect a witness).

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Disciplinary Procedures

Appeals Process

Employees may appeal against any decision made at any stage of the formal disciplinary procedure.

Where a dismissal occurs, and the employee has exhausted the internal appeal procedure outlined below, they will have a further right of appeal to the Civil Service Appeal Board. The Personnel Section can supply details of how to appeal to the Civil Service Appeal Board.

Principles

Wherever possible, an appeal will be heard by a manager, senior to the disciplining manager, and not previously involved in the disciplinary procedure, with the Head of Personnel or their nominated representative in attendance. The employee will be informed in advance of those staff nominated for the appeal panel and any reasonable request for a change will be considered if alternative suitable staff are available.

An employee will have the right to be accompanied at the appeal by a work colleague or trade union representative.

An employee will be given full opportunity to state the ground(s) on which the appeal is made.

The manager hearing the appeal has the authority to change a previous decision if appropriate.

Procedure

An appeal against a formal warning or dismissal should be made within five working days of the warning or notice of dismissal being issued.

The appeal should be made in writing and should state the grounds on which the decision should be reviewed.

The appeal should be sent to the Managing Director or their delegated representative from within JNCC. The appeal hearing will normally be held within 10 working days of receiving the written appeal. If the hearing is cancelled due to unforeseen circumstances, a further hearing will be arranged for as soon as reasonably possible. If the employee fails to attend, then the appeal will be dismissed.

The appeal hearing should focus on specific factors, which the employee feels have received insufficient consideration, such as:

- An inconsistent, inappropriate or excessively harsh penalty
- Extenuating circumstances
- Bias of the disciplining manager
- The appropriate process not followed
- New evidence subsequently coming to light

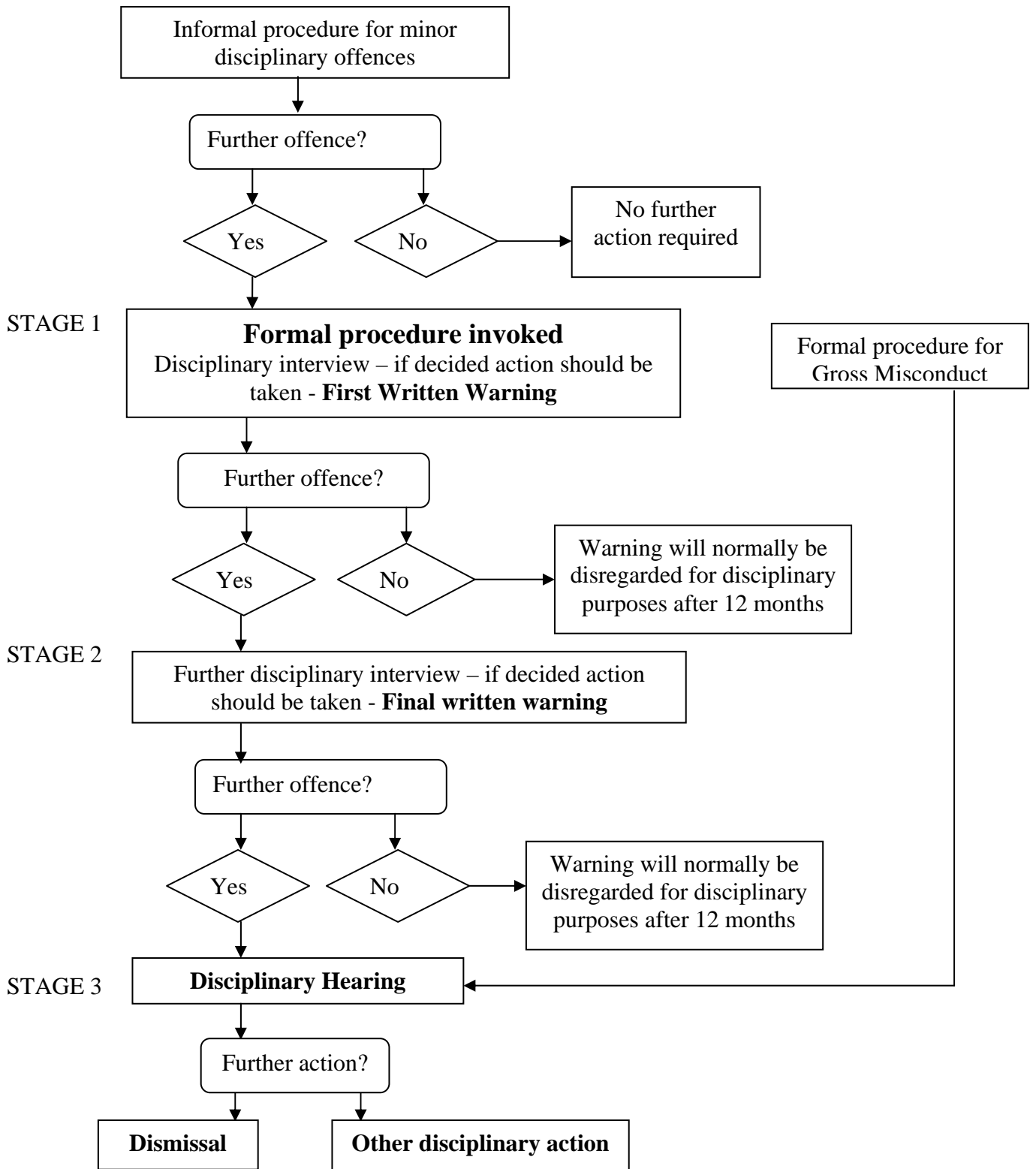
The outcome of the appeal hearing will be communicated in writing within five working days of the hearing. This decision will be final and no further appeal will be considered.

Where an appeal against dismissal fails, the effective date of termination shall be the date on which the employee was originally dismissed.

The result of a successful appeal will either mean that the record of the original warning or dismissal is deleted, or a lesser penalty is substituted.

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Disciplinary Procedures



The above stages and disciplinary penalties will normally apply, however certain stages may be omitted for a more serious offence.