

Formal Disciplinary Procedure

This procedure applies to all staff and relates to staff conduct, behaviour, attitude, and poor performance due to lack of application. It is not intended to address issues of job performance due to lack of ability (see [formal capability procedure](#)).

Before commencing this procedure, managers should have assessed the alleged misconduct or unsatisfactory behaviour and undertaken appropriate informal interventions. (See procedure where [performance, conduct or behaviour falls below expected standards](#).)

Managers

- should consider seeking advice from HR services at an early stage of the procedure
- must undertake actions in a timely manner to ensure that the procedure is not delayed
- must ensure that accurate records are made of all meetings and decisions throughout the procedure and that these are stored confidentially and securely
- should discuss with HR if this procedure was about to commence when the employee in question leaves council employment.

Managers must always seek HR advice if the employee is or becomes during the course of this procedure under a police investigation, subject to a criminal charge or conviction, whether related to conduct when not working, or during the course of their work.

Employees who are members of a trade union may wish to seek support from their union representative.

Colour key:

Employee responsibility
Line manager responsibility
Senior manager responsibility
HR responsibility
Commissioning manager responsibility
Investigating officer responsibility

Actions	Responsibilities and Duties
1 Identify commissioning manager	<p>The line manager will liaise with their manager and HR to identify a commissioning manager who will commission the investigation and manage the disciplinary process. This will vary depending on the nature and complexity of the allegation(s). This may be the line manager, another manager or a more senior manager from either within or outside the service area as appropriate.</p>
2 Assess nature of misconduct and plan procedure	<p>How the process is taken forward depends on whether the incident is considered as misconduct or gross misconduct. See definitions of misconduct and gross misconduct for examples. If considered to be misconduct, continue to Step 5.</p> <p>If the case is potentially gross misconduct, a senior manager (who may also be the commissioning manager) will consider suspension in discussion with HR, see Step 4.</p> <p>If the allegations are about safeguarding inform the relevant person in the</p> <ul style="list-style-type: none"> • local safeguarding children's procedure, or • local safeguarding adults procedure
3 Arrange case review meetings	<p>Arrange regular case review meetings (to include HR, senior managers and legal as relevant) to ensure that there are no delays in the procedure.</p>
4 Consider suspension	<p>If considering suspension seek guidance from HR services.</p> <p>A consideration is whether allowing the employee to remain at work would impede the investigation, or if there is some other compelling reason. Suspension should only be considered if there is no other role that the employee could undertake whilst an investigation is carried out. (See suspension guidance).</p> <p>Suspension is usually advisable where the employee is suspected of having committed an act of gross misconduct (see definitions of misconduct and gross misconduct), but is not normally appropriate in cases of minor misconduct.</p> <p>Suspension will be with full pay and for the shortest possible time with regular reviews by the commissioning manager. Confirm suspension in writing using letter template D2.</p>

Actions	Responsibilities and Duties
5 Identify a suitable investigating officer	<p>Where a manager becomes aware that there has been - or may have been - misconduct on the part of a particular employee, a full and thorough investigation into the surrounding circumstances will be necessary.</p> <p>The commissioning manager should consider who would be the best person to conduct an investigation to gather facts and interview relevant parties. If the situation seems to be straightforward, they should undertake an investigation themselves. If it is potentially wide ranging or serious, or they consider that someone independent from the team would provide the most objective outlook on the situation, a different manager or someone from outside the organisation is likely to be more appropriate.</p> <p>Clear terms of reference should be set out and given to the investigating officer, as well as conducting an investigation guidance.</p>
6 Conduct investigation without undue delay	<p>The investigation might involve:</p> <ul style="list-style-type: none"> • checking if the employee has any previous disciplinary warnings on file, and whether or not any such warnings are still active • reviewing the employee's written appraisals to check whether or not a similar problem has been discussed at an appraisal review • talking to other employees who may have relevant information • checking telephone records and/or computer records (subject to the laws on interception of communications and the employer's own policies on this matter) • reviewing any other relevant documentation • holding an investigatory interview with the employee to establish the facts <p>Conducting investigation guidance should be followed.</p> <p>Templates are available to write to people to request attendance at an investigation meeting: D3a investigation meeting - respondent and D3b investigation meeting - witness.</p>

Actions	Responsibilities and Duties
<p>7 Write report and investigations</p>	<p>At the end of the investigation the investigating officer will complete a report with recommendation actions for the commissioning manager to consider and decide whether or not it is appropriate to proceed to a disciplinary hearing. Use D1 summary of investigation report template to summarise the investigation's findings and recommendations.</p> <p>In completing the report and considering recommendations, the investigating officer should:</p> <ul style="list-style-type: none"> • view the matter objectively • take into account all the evidence, including the employee's version of events or explanation of what happened • consider whether or not there is a case to answer <p>It should be noted that if a decision is taken that disciplinary proceedings will be commenced against the employee, the employee will have the right to be informed of all the evidence against him or her so as to have a full opportunity to provide an explanation.</p> <p>The investigating officer should be mindful of who needs to know what information in the report and, where appropriate, redact documents to protect anonymity.</p> <p>HR are available to provide advice.</p>
<p>8 Consider investigation report</p>	<p>The manager will hold a case review with (and organised by) HR to consider the investigation report and determine whether or not there is a case to answer based on balance of probability.</p> <p>For allegations that may lead to a final written warning or of gross misconduct that may lead to dismissal this and the following steps must be carried out by a senior manager (see levels of authorisation).</p> <p>If there is no case to answer following the investigation, explain this to the employee and confirm in writing using D4 outcome of investigation or hearing no case to answer, otherwise, proceed to Step 7.</p>

Actions	Responsibilities and Duties
9 Arrange disciplinary hearing	<p>The commissioning manager will arrange a hearing. Use the checklist below:-</p> <ul style="list-style-type: none"> ✓ Notify the employee in writing using invitation to disciplinary hearing, giving five working days' notice <ul style="list-style-type: none"> ○ State that the hearing will be held under the disciplinary procedure and provide a copy of the procedure ○ List the matters that will be discussed ○ Provide reasonable detail of the specific incidents that are thought to have occurred, any allegations or accusations ○ Provide details of any accusations or information provided by witnesses ○ State that the outcome could be disciplinary action or dismissal as appropriate ○ Ask the employee to provide any documentation or names of witnesses to support their case at least three working days before the meeting ○ Tell the employee that they can bring a work colleague or trade union rep to support them, and to let you know who that will be in advance of the meeting. ✓ Identify a manager to chair the hearing ✓ Inform HR that you are arranging a hearing. HR must be involved if dismissal is a possible outcome. ✓ Consider if reasonable adjustments are necessary for the employee or their companion. ✓ The employee should be informed if tape recording is being considered as they will need to give their consent. If this is not given, manual notes must be taken, and a note taker arranged. ✓ Request the investigating officer's attendance ✓ Request witnesses' attendance – send them the being a witness guidance <ul style="list-style-type: none"> ○ Consider where they will wait to be called and whether they will be required to be in separate rooms. ✓ Collate and read the notes plus any other documentation from the investigation ✓ Stress to all concerned the confidentiality of the allegation and discussions. <p>NB: It is important that all relevant information is considered at the hearing for fairness.</p>

Actions	Responsibilities and Duties
10 Conduct hearing	<p>The commissioning or another nominated manager chairs the hearing. HR should attend especially if dismissal is a possible outcome, as detailed in the invitation to hearing letter.</p> <p>The objective of this hearing is to formally establish whether, having considered all the facts, mitigating factors, and by hearing the evidence and interviewing witnesses, that there is a reasonable belief that misconduct has occurred.</p> <p>If the manager decides that the balance of probability is that the alleged misconduct has happened, it must be made clear to the employee that misconduct will not be tolerated and issue an appropriate sanction.</p> <p>Depending on the nature of the incident, it may be appropriate to agree a period for the employee to improve their conduct and set an appropriate action plan.</p> <p>See conducting formal hearings.</p>
11 Issue outcome	<p>Use the appropriate letter templates depending on outcome: D6 first or final written warning; D7 dismissal; D8 summary dismissal, to ensure all the correct information has been included. The outcome must be issued within two working days of the hearing. A copy of the letter should be sent to HR where it will be kept on the employee's file for up to 12 months (depending on severity) where it will remain 'live' for this time.</p> <p>If there is no case to answer, explain this to the employee and send D4 outcome of investigation or hearing no case to answer, copied to HR.</p>

Actions	Responsibilities and Duties
12 Employee can appeal	<p>If you wish to appeal, you must write to the senior manager (using the D9 appeal form) within five working days of receiving the written warning. Where the appropriate level of appeal is to the Employment Appeal Panel (EAP) the form should be sent to democratic services.</p> <p>Grounds for appeal are:</p> <ul style="list-style-type: none"> • The procedure was not followed • The finding of the disciplinary hearing was not reasonable • The management decision was not appropriate • New or additional information has come to light which was not previously available at the hearing
13 Arrange the appeal	<p>A senior manager not previously involved (or the EAP as appropriate) should arrange a review meeting with the employee and the manager who chaired the disciplinary hearing, giving five working days' notice in writing. An HR Advisor may also be invited to the meeting. The employee can bring a work colleague or trade union rep. Use the letter template D10 notice of appeal meeting to invite the employee and arrange the meeting to resolve the issue promptly.</p> <p>If the meeting is to be recorded, the employee must be informed and their consent sought in advance.</p>
14 Senior manager (EAP) reviews the case	<p>The review is not a re-investigation of the case. Its purpose is to review whether or not the parameters set for the investigation and the decision reached were both 'reasonable'.</p>
15 Notify appeal outcome	<p>After the appeal meeting, you must provide written notification to the employee and line manager of your decision, plus reasons for your decision, within two working days - use letter template D11 outcome of appeal meeting.</p> <p>There are two possible outcomes available to you:</p> <ul style="list-style-type: none"> • confirm the formal warning • withdraw the warning (no misconduct found)
16 Conduct 2nd hearing	<p>If there is another incident of misconduct during the 'live' period, you must follow steps 1 through to 13.</p> <p>Step 9 would be a final written warning, and the employee informed that any further misconduct may lead to dismissal.</p>

Actions	Responsibilities and Duties
17 Conduct 3rd hearing	<p>If after the final written warning, conduct is still not acceptable or there has been another act of misconduct, or if there have been no previous warnings but the issue is one of potential gross misconduct, you must follow steps 1 to 15.</p> <p>However at this stage,</p> <ul style="list-style-type: none"> • the minimum level of manager for conducting the hearing is AD (unless devolved) • Instead of issuing a warning at step 8, you should issue D7 dismissal letter if that is the outcome. See the template letters provided and get it checked by HR to ensure it meets legal requirements. • appeals would be considered by a director (unless devolved) or the EAP as appropriate, who may uphold the dismissal or award an alternative sanction <p>It is advised that if you have not yet involved an HR advisor that you do so at this stage and they will help you to facilitate the process which could result in dismissal.</p> <p>Notify HR of the dismissal using the leaver form on Business World, and send HR services all associated documents for this procedure for filing on the central employee record.</p> <p>Complete the exit checklist.</p>
18 Review lessons learned	<p>HR arranges to meet with relevant stakeholders (such as the investigating officer, commissioning manager, senior manager) to review the case and identify lessons learned. Appropriate changes should be actioned. If recommendations were provided from the investigation report then an action plan should be produced and managed by the service with HR support.</p>

Document links	Definitions of misconduct and gross misconduct Procedure where performance, conduct or behaviour falls below expected standards Conducting an investigation guidance Being a witness Time periods Conducting formal hearings Suspension guidance Role of a companion at a formal hearing Failure to participate in a formal process guidance Levels of authorisation Templates: D1 Summary of Investigation report template D2 Suspension letter D3a Investigation meeting – respondent D3b Investigation meeting – witness D4 Outcome of investigation – no case to answer D5 Notice of disciplinary hearing D6 1st / final written warning D7 Dismissal D8 Summary dismissal D9 Appeal form D10 Notice of appeal meeting D11 Outcome of appeal Exit checklist
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Document control

Version	Date issued	Description of change	Pages affected	Reason
2.0	Mar 2014	Updated in line with new recruitment / change and exit processes	All	ELC project
3.0	Jan 2016	Revised process. Disciplinary guidance has been incorporated.	All	Fit for purpose review
3.01	3 Jul 2017	Form change.	8	New Business World process