

# **Disciplinary Policy**

## **Contents**

**Policy Statement**

**Procedure – Purpose**

## **Procedure - Steps**

**Investigation of Complaints**

**Deciding on Action Following Investigation**

**Disciplinary Sanctions**

**The Disciplinary Stages**

**Oral / First Written Warning**

**Appeals Against Oral / First Written Warnings**

**Final Written Warning / Dismissal**

**Appeals Against Final Warnings / Dismissal**

**Disciplinary Procedure –Directors**

**Disciplinary Procedure – Chief Executive**

**Failure to Meet the Standards of Performance Required**

## **Other Matters**

**Length of Warning**

**Criminal Charges**

## **1.0 Policy Statement**

1.1 The Joint Board (in agreement with the representatives of recognised trade unions) recognises that discipline is essential for the conduct of all staff at work. A disciplinary procedure is necessary for the promotion of fairness, equality and consistency of approach in the treatment of individuals. Agreed procedures are intended to set standards which will help to ensure that all staff have been afforded a fair method of dealing with all matters of discipline.

1.2 Disciplinary matters should be dealt with both fairly and quickly. The relevant issues will be clearly specified at all stages and access to all essential information will be made available to all parties as soon as the circumstances of the situation permit.

1.3 This policy, together with the associated procedure, is based on the premise that staff accept rules and standards of performance while at work and that all parties understand that disciplinary procedures are primarily designed to emphasise and encourage improvement of the individual where that is considered necessary, rather than being just a means of imposing sanctions.

1.4 Staff have a right to be represented at each stage of a disciplinary procedure by a trade union representative or other representative of their own choosing. If their representative/colleague is not available on the time and date set, an alternative should be offered.

1.5 Compliance with the policy and procedure is considered necessary if levels of consistency and fairness are to be maintained. Failure to follow procedures may, according to the circumstances of the failure, either lead to an inability to impose a sanction which would otherwise have been warranted or to a decision by an appeals body to overturn the decision reached at a hearing.

### **Disciplinary Procedure – Purpose of Procedure**

1.1 The purpose of this procedure is to:

- a. promote fairness and order in the treatment of individuals and in the conduct of staff relations;
- b. assist the organisation to operate effectively;
- c. set standards of conduct at work and help to ensure that these are adhered to by all staff;
- d. ensure that all staff are aware of the standards expected of them;
- e. provide a fair and consistent method of dealing with alleged breaches of the specified standards; and
- f. comply with the legal framework of employment law, specifically the Employment Protection (Consolidation) Act, 1978, the Trade Union Reform & Employment Rights Act, 1993 and the Employment Rights Act 1996.

1.2 The detailed stages of the procedure are set out in the following paragraphs. A common requirement of all stages is that a written note is prepared as a record of the events and outcomes of that particular stage.

1.3 Supplementary guidance for managers to promote good practice in dealing with disciplinary matters is published separately in addition to these procedures.

## **Disciplinary Procedure – Steps**

### **Investigation of Complaints**

### **Deciding on Action Following Investigation**

### **Disciplinary Sanctions**

### **The Disciplinary Stages**

### **Oral / First Written Warning**

### **Appeals Against Oral / First Written Warnings**

### **Final Written Warning / Dismissal**

### **Appeals Against Final Warnings / Dismissal**

### **Disciplinary Procedure –Directors**

### **Disciplinary Procedure – Chief Executive**

### **Failure to Meet the Standards of Performance Required**

[Appendix 1](#) Disciplinary and Appeal Hearing Procedures

[Appendix 2](#) Illustrative Disciplinary Outcomes

## **2.0 Investigation of Complaints**

- 2.1 The first stage of all disciplinary procedures occurs when a potential disciplinary matter of concern comes to the attention of a line manager who has to decide upon an appropriate course of action. Any individual who is unsure of the steps to be taken should seek further advice at an early stage, from his/her line manager, or Human Resources.
- 2.2 In all circumstances, early attention should be given to gathering all the relevant facts, to collecting any relevant documentation and if considered necessary, to collecting statements from all involved. This process should be carried out by the line manager or other appropriate officer as quickly and as confidentially as circumstances permit and should normally take no more than ten working days. Police involvement may necessitate an extension of the timescales for investigation. In these circumstances, Services should contact Human Resources for further advice.
- 2.3 Any member of staff who is being interviewed as part of a formal investigation which may lead to a disciplinary hearing, must be offered the right to be accompanied. It is for the

individual to exercise his / her discretion in deciding whether or not to have a trade union representative, friend or colleague present. If the member of staff is a trade union official the matter should be discussed with Human Resources and a full-time representative of the union should be advised of the matter.

- 2.4 The member of staff should be advised in writing of the nature of their alleged conduct and any other factors which are being investigated.
- 2.5 In the event that a member of staff is suspended with pay whilst further investigations are carried out, priority should be given to ensuring that all such investigations are carried out as quickly as possible.

### **3.0 Deciding on Action Following Investigation**

- 3.1 Once the necessary information has been collected, the manager who has commissioned the investigation should take a view as to what further action, if any, is required. The available options are likely to be as follows:-
  - (a.) determine that no further action is required and advise the person(s) involved of this decision;
  - (b.) provide guidance or counselling to the person(s) involved in order to ensure a better understanding of the standards required;
  - (c.) instigate formal disciplinary procedures;
  - (d.) suspend, with pay, the person(s) involved whilst further investigations are carried out.
- 3.2 In all cases it is necessary to make clear to the people involved, the course of action which is being taken, the steps which are involved together with a resume of the potential outcomes. All staff and union representatives involved should be advised in writing of the intended course of action within three working days of the completion of the initial investigation.
- 3.3 If formal disciplinary action is the course which is being taken the member(s) of staff should be informed of:
  - (a.) the nature and detail of the complaint;
  - (b.) the fact that the matter is being referred to a disciplinary hearing;
  - (c.) the right of the individual to representation;
  - (d.) the details of where and when the Hearing will take place together with the composition of the hearing panel; and
  - (e.) the fact that the person's job is at risk where dismissal is a potential outcome.

The member of staff and union representative should be advised of these details in writing by the convenor of the disciplinary hearing.

### **4.0 Disciplinary Sanctions**

- 4.1 Sanctions must be appropriate to the facts and circumstances of the incident. Appendix 2 gives guidance to follow in deciding upon sanctions. These are illustrative and are not exhaustive. The range of formal sanctions includes oral warning, written warning (which may be a final written warning), dismissal with or without notice and/or demotion/transfer as a lesser sanction.

## **5.0 The Disciplinary Stages**

- 5.1 The disciplinary stages of the procedure set out below are separated into two sections. Paragraphs 6 and 7 provide a procedure for disciplinary matters which, potentially, will lead to the imposition of an oral or first written warning. Paragraphs 8 and 9 relate to situations where the potential disciplinary sanctions include a final written warning or dismissal. Consideration should therefore be given to the potential outcomes when deciding which procedure to follow.
- 5.2 The officer who convenes the disciplinary hearing should not normally be the officer who has carried out the disciplinary investigation or who has brought the allegations against the member of staff who is the subject of the disciplinary investigation.
- 5.3 The member of staff shall be given written notice of the date of the disciplinary hearing: normally five working days in advance. Whilst there is a requirement to deal with all disciplinary matters quickly, a member of staff who requests additional time for the purposes of either preparing a response or having a representative available should be granted a reasonable extension.
- 5.4 If a member of staff chooses not to be represented, the disciplinary hearing should not commence until the convenor has made sure that the member of staff fully understands his/her rights and confirms that she/he does not wish to be represented. In such a situation, the convenor of the hearing should take care to note the individual's response.

## **6.0 Oral / First Written Warning**

- 6.1 A disciplinary hearing convened to hear allegations relating to the potential outcome of an oral or first or subsequent written warning (excluding final written dealt with below in paragraph 8) shall be heard by the Head of Service or his/her nominee, who should be within the service and senior to the member of staff involved. Such a nominated officer will have full responsibility for the decision and will normally represent management if the member of staff appeals the decision.
- 6.2 The convenor shall indicate his/her decision to the member of staff at the end of the hearing or following an adjournment to deliberate. The decision will then be confirmed, in writing, within 5 working days, including details concerning the allegations and representations made during the course of the Hearing.

## **7.0 Appeals Against Oral / First Written Warnings**

- 7.1 Within 10 working days of receipt of the letter confirming the decision of the hearing, the member of staff may submit an appeal against the decision. All appeals should be made in writing to the member of staff's Service Director who will arrange an appeals hearing. The Appeal shall be heard by the Director or Head of Service not involved in the original hearing. In exceptional circumstances, the appeal may be referred to another Director/Head of Service, by the mutual agreement of both the member of staff and management and in consultation with the Head of Human Resources.
- 7.2 The appeal shall be heard within 20 working days of the submission of the appeals letter. The member of staff should receive 5 working days notice of the date of the appeal hearing.
- 7.3 At the conclusion of the hearing or following an adjournment to deliberate, the convenor will indicate his/her decision to the member of staff. The decision will be confirmed in writing

within 5 working days of the date of the hearing.

7.4 There shall be no further right of appeal against a disciplinary sanction of either an oral or a first or subsequent written warning.

## **8.0 Final Written Warning / Dismissal**

8.1 If the potential outcome of a disciplinary hearing is either a final written warning or a dismissal, the disciplinary hearing shall be convened by the Director or member of staff's Head of Service.

8.2 Advisers from Human Resources and Legal Services should be in attendance at the hearing.

8.3 Where the convenor has concluded that disciplinary action is appropriate, reference should be made to the disciplinary record of the member of staff in order to take account of any current warnings when determining the sanction.

8.4 The convenor shall indicate his/her decision to the member of staff at the end of the hearing or following an adjournment to deliberate. The decision will then be confirmed, in writing, within 5 working days, including details concerning the allegations and representations made during the course of the hearing.

8.5 In exceptional circumstances where the case is of a complexity which requires consideration of detailed submissions or further investigation, the convenor may adjourn the hearing. The hearing shall be reconvened within 5 working days unless a longer adjournment is agreed by all parties involved.

## **9.0 Appeals Against Final Warnings / Dismissal**

9.1 An appeal against a final written warning shall be lodged by the appellant within 10 working days of receipt of the initial disciplinary letter. The appeal should be lodged with the Head of Human Resources who shall arrange to hold an appeal hearing within 20 working days of receipt of the appeal letter. The intention to call "witnesses" shall also be indicated prior to commencement of the appeal hearing.

9.2 In the case of a final written warning the appeal shall be heard by the Service Director if not involved in the original hearing. Representatives from Legal Services and Human Resources will attend.

9.3 The appeals hearing shall be conducted in accordance with the Guidelines outlined in the appropriate Code of Practice.

9.4 At the conclusion of the appeals hearing the Service Director, shall indicate to the appellant the decision of the hearing. The decision will be confirmed in writing, within 5 working days.

This stage ends the right of appeal within the Joint Board's procedures in relation to final written warnings.

9.5 An appeal against dismissal shall be heard by the Appeals Committee of the Joint Board. The appeal should be lodged with the Head of Human Resources by the member of staff in writing within 10 working days of receipt of the initial disciplinary letter. The appeal will be heard

within 30 working days of the submission of the appeal.

9.6 The Appeals Committee of the Joint Board shall conduct the appeal in accordance with the standing orders of the Joint Board and the relevant Code of Practice. The Committee will be advised by Human Resources and Legal Services. At the conclusion of the Appeals Committee Hearing, the Convenor of the Appeals Committee shall indicate the decision of the Appeals Committee to the appellant. This decision will be confirmed in writing within 5 working days of the conclusion of the Appeals Committee by the Head of Human Resources. This shall be the final right of appeal within the Joint Board's procedures.

9.7 Nothing in this procedure shall be in derogation of an individual's statutory rights.

#### **10.0 Disciplinary Procedure –Directors**

10.1 In the event that a disciplinary matter is raised concerning an Director, the Chief Executive will nominate an officer to carry out an investigation.

10.2 Where a disciplinary hearing is considered necessary, the Chief Executive shall make arrangements to commence a formal hearing and process the disciplinary procedure.

10.3 The Chief Executive may request representatives of Human Resources and of Legal Services to attend to provide advice.

10.4 The Chief Executive shall indicate his/her decision at the end of the hearing or following an adjournment to deliberate. The decision will then be confirmed, in writing, within 5 working days.

10.5 An appeal against the decision will be heard by the Appeals Committee of the Joint Board. Any such appeal will be heard in accordance with this procedure and the Standing Orders of the Joint Board.

#### **11.0 Disciplinary Procedure – Chief Executive**

11.1 In the event that a disciplinary matter is raised against the Chief Executive, the Head of Human Resources will make arrangements to investigate and if necessary progress the procedure, on behalf of the Joint Board.

The procedure used will be that agreed by the JNC for Chief Officials and will be consistent with the Disciplinary Code of Practice.

#### **12.0 Failure to Meet the Standards of Performance Required**

Distinct from misconduct is the situation of serious or persistent failure to meet the standards of performance required for the post on the grounds of capability.

Within the spirit of this policy and procedure, the onus will be shared by staff and the employer to try and ensure the job requirements are met by means of supported encouragement, training and adaptability, thereby maintaining the appropriate standards.

Where, despite such encouragement and assistance, the member of staff is unable to reach the required standard, consideration should be given to finding suitable alternative work. If such

measures prove unsuccessful, the position would be explained to the member of staff before dismissal action is taken. A warning would be given before dismissal, and the procedure for a hearing would be the same as set out in Appendix 1.

## **Appendix 1**

### **Procedure to be Followed at a Disciplinary Hearing**

Investigating manager presents their information including witness information (if applicable); Member of staff (or representative) may ask questions; Convenor or advisers (if present) may ask questions.

Member Of Staff (or representative) presents his/her information including witness information (if applicable); Manager may ask questions; Convenor or advisers (if present) may ask questions.

Manager provides a summary of disciplinary case.

Member Of Staff (or representative) presents summary of his / her side of events.

Manager and Member Of Staff (and representative) are asked to leave room.

Convenor together with advisers (if present) considers decision.

All parties are asked to return and the decision, together with a brief explanation of the future action that will be taken, is given.

Convenor provides written confirmation of decision within 5 working days.

An adjournment can be called at any stage in the hearing by any of the persons involved. Any adjournment should be for a reasonable period of time and should not, where possible, disrupt either the management or the member of staff's presentation.

### **Procedure to be Followed at an Appeals Hearing**

Member Of Staff (or representative) presents his / her case, including the reason for the appeal, relevant information including witness information (if applicable), Manager may ask questions; Convenor / Panel / Committee or advisers may ask questions.

The Convenor of the disciplinary hearing presents Manager presents his / her information including witness information (if applicable); Member of Staff (or representative) may ask questions; Convenor / Panel / Committee or Advisers may ask questions.

Manager (or representative) provides a summary of disciplinary case.

Member of Staff presents summary of their side of events.

Manager and Member of Staff (and representative) are asked to leave room.

Convenor, together with advisers, considers decision.

All parties are asked to return and decision, together with a brief explanation, is given.

Convenor provides written confirmation of decision with 5 working days.

An adjournment can be called at any stage in the hearing by any of the persons involved. Any adjournment should be for a reasonable period of time and should not, where possible, disrupt either the management or the member of staff's presentation.

## **Appendix 2**

### **Disciplinary Outcomes**

#### **Gross Misconduct**

Gross Misconduct is behaviour of such a nature that the Joint Board is unable to tolerate the continued employment of the individual concerned and will normally lead to the member of staff being dismissed.

The following list is neither exclusive nor exhaustive but is indicative of the types of behaviour which may be found to be gross misconduct and will normally result in dismissal.

- Theft of Joint Board property.
- Theft of property not belonging to the Joint Board whilst engaged or purporting to be engaged on Joint Board business.
- Unauthorised use of Joint Board property or property not belonging to the Joint Board whilst engaged or purporting to be engaged on Joint Board business.
- Wilful damage or misuse of Joint Board property or resources.
- Wilful damage to or misuse of property or resources not belonging to the Joint Board whilst engaged or purporting to be engaged on Joint Board business.
- Physical or indecent assault on any person whilst engaged or purporting to be engaged on Joint Board business.
- Grossly indecent, abusive or threatening behaviour to any person whilst engaged or purporting to be engaged on Joint Board business.
- Fighting or violent conduct at work.
- Wilful breach of specified safety rules.
- Dishonest or fraudulent acts.
- Wilful provision of false or misleading information or wilful non-disclosure of information, either during the recruitment process or in subsequent employment which materially affects the contract of employment.
- Wilful breach of confidentiality or abuse of authority vested in the post.
- Wilful non-disclosure of an interest, whether direct or indirect, in a contractual agreement between an agency and the Joint Board.
- Criminal conviction/civil liability or other unacceptable conduct which renders the member of staff unsuitable for the duties and responsibilities of the post, whether or not the conduct occurred whilst on duty.
- Gross carelessness or negligence in carrying out the duties and responsibilities of the post.
- Serious discriminatory acts or omissions contrary to or inconsistent with the Joint Boards policy on equality of opportunity.
- Incapacity to carry out the duties of the post due to the intake of alcohol or unprescribed use of drugs.

#### **Other Types of Misconduct**

There are other types of misconduct which will normally result in disciplinary action short of dismissal being taken in the first instance. The disciplinary action may take the form of an oral warning, a written warning which may be a final written warning and/or demotion/transfer as a lesser sanction. The action taken will depend on the degree of seriousness of the misconduct, the member of staff's current disciplinary record and any other relevant factors. The sanctions available may be conjoined if considered necessary and appropriate to the circumstances of the situation. It must also be recognised that some of these types of misconduct may be found to be gross misconduct depending on the circumstances in which they occur. In such circumstances the member of staff should be clearly advised that the allegation is being considered as gross misconduct in the letter advising them of the investigation/hearing.

The following list is neither exclusive nor exhaustive but is indicative of the types of behaviour which will result in action short of dismissal being taken.

- Careless damage to Joint Board property.
- Careless damage to property not belonging to the Joint Board whilst engaged or purporting to be engaged on Joint Board business.
- Unauthorised absence from work.
- Carelessness or negligence in carrying out the duties and responsibilities of the post.
- Refusal to obey reasonable instructions or otherwise fulfil the contractual obligations of the post.
- Abusive or threatening behaviour to any person whilst engaged or purporting to be engaged on Joint Board business.
- Less serious discriminatory acts or omissions contrary to or inconsistent with the principle of equality.
- Less serious breach of safety rules.
- Persistent bad timekeeping.
- Persistent and unrelated short-term sickness absence.
- Unauthorised disclosure of personal information in breach of Joint Board policy and data protection legislation.

When a member of staff currently has a disciplinary warning on their record, this should be used to determine any future action. For example, if a member of staff has a current oral warning they may be given a written warning for a further act of misconduct.

### **Length of Warning**

The decision of the hearing will be recorded on the member of staff's personal file. A new disciplinary warning will be effective from the date of the hearing, will run concurrently with any previous warning and will remain admissible against further misdemeanors as follows:

Oral Warning 6 months

Written Warning 12 months

Final Written Warning 18 months

Following these periods, the warning will be disregarded for future disciplinary

purposes.

Exceptionally, there may be circumstances where the misconduct is so serious that it cannot be realistically disregarded. In such a situation, it should be made clear to the member of staff that the warnings will not be removed but will be taken into account in determining the sanction in any future disciplinary action.

### **Criminal Charges**

A charge, conviction, or investigation due to a criminal offence, does not automatically invoke disciplinary action.

Consideration must be given as to whether the criminal offence is relevant to the member of staff's post, Human Resources and Legal Services will provide advice.

If a manager considers the criminal offence to be relevant to the member of staff's post, she / he should investigate the incident using the Disciplinary Procedure in the same way as for any potential disciplinary offence.

Revised April 2000