

## IMPROVEMENT SERVICE

### DISCIPLINARY POLICY AND PROCEDURE

#### 1. Introduction

1.1 The IS recognises that there are two main areas where a disciplinary procedure may be used: capability/performance and conduct. In all cases, the IS will follow the procedures set out below and with reference to the Acas Code of Practice on Disciplinary and Grievance procedures:

[Acas](#)

1.2 This procedure is designed to help and encourage employees to achieve and maintain standards of conduct and performance. Disciplinary rules and procedures are also necessary for promoting fairness in the treatment of individuals and in the conduct of industrial relations.

1.3 Employees should note that issues of misconduct and capability/performance both fall within the scope of this procedure. The warning stages of the procedure will escalate whether the same, similar or a different misconduct offence is committed during the lifetime of a warning or where an issue of poor performance arises.

1.4 As noted above this procedure reflects the guidance contained within the ACAS Code of Practice on Disciplinary and Grievance Procedures.

#### 2. Capability/performance

2.1 Capability issues may arise because an employee doesn't have adequate training or is unable to perform the work to a satisfactory standard for another reason. An employer must try to identify the reason and give appropriate support, before invoking a formal procedure.

2.2 In cases of underperformance, the IS has a clear procedure in place for managing this, contained within the Performance Appraisal and Development policy. If the employee does not reach the level of performance required by the review date as outlined in the Performance Appraisal and Development policy, and in the absence of an important indication to the contrary, the IS disciplinary policy and procedures are then invoked.

2.3 Situations where an individual is unable to do their job because of ill health may also fall into this category. In these instances, an employee should be dealt with empathetically and offered appropriate support. Unacceptable levels of absence could still result in the IS making use of sickness absence procedures and warnings.

2.4 The IS is mindful in cases of absence where the individual has a disability to ensure that it is compliant with the Equality Act and the duty to make reasonable adjustments.

### **3. Conduct**

3.1 Employee misconduct covers a wide range of issues that vary in their level of seriousness, including:

- failure to follow reasonable management instructions
- abuse of the organisation's computer system or Internet access
- bullying behaviour or creating a hostile work environment
- poor attendance and time keeping
- theft
- fraud
- fighting
- a criminal offence.

3.2 The more serious offences may constitute gross misconduct, which could involve offences such as theft, fraud, physical violence or serious insubordination.

3.3 Although IS recognises it can dismiss an employee with immediate effect in a case of gross misconduct, it believes it is still important to follow a fair procedure and investigate the alleged offence. There should also be an opportunity for the employee to respond before making a decision to dismiss.

### **4. Counselling**

4.1 This procedure should be viewed as a means of encouraging an improvement in an individual's conduct or performance and not as merely a method of applying sanctions. Line managers play an important role in the day-to-day management of employees and should seek to deal with minor lapses in conduct or performance through informal counselling in the first instance.

4.2 Counselling should normally be a one-to-one discussion between an employee and their manager. During counselling the manager should discuss with the employee the required standards, the manner in which the employee has failed to meet those standards and the possible reason(s) for that failure. The line manager should indicate clearly to the employee the improvement required and should consider taking other action which might assist the employee to achieve this improvement e.g. closer supervision, additional training etc. Counselling does not form part of the formal disciplinary procedure and therefore no formal warnings can be given.

4.3 The manager shall make a personal record of the counselling by completing a 'Record of Counselling' form (see Appendix 1) showing the date of and reason(s) for counselling and shall inform the employee accordingly.

4.4 Where counselling does not result in the required improvement or where the alleged failure

to meet the required standards is considered to be of a more serious nature, the formal procedure should be followed.

## **5. Disciplinary procedure – general**

5.1. Whenever formal disciplinary action is being contemplated the points of procedure set down in this policy shall be adhered to.

### 5.2. Investigation

5.2.1 A disciplinary hearing shall not be convened until the circumstances of the case have been fully investigated. If following investigations, a disciplinary hearing is deemed to be unjustified, any written statements obtained and any other documents relating to the investigation shall be destroyed.

### 5.3 Convening a Disciplinary Hearing

5.3.1 If, following investigation, a disciplinary hearing is deemed necessary, the employee concerned shall be given at least five working days' notice in writing of the hearing and shall also be informed in the same letter of:

- the fact that it will be a formal disciplinary hearing;
- the nature of the complaint(s) with sufficient details;
- the name(s) of any witness(es) who will present evidence at the hearing;
- the right to call witnesses or submit statements or other documentation subject to the names of any such witnesses and/or any written submissions being provided in advance to the person conducting the hearing; and
- the right to be accompanied/represented at the hearing by a trade union official or some other person of their choice.

5.3.2 Copies of any statements or other documentary evidence will, wherever possible, be made available prior to the hearing.

### 5.4 Conducting a Disciplinary Hearing

5.4.1 As far as reasonably possible, the person who conducted the investigation shall not also conduct the disciplinary hearing.

5.4.2 The person conducting the hearing shall ensure that the facts gathered during the investigation are presented to the employee. Witnesses, if any, shall be called to give their evidence. The person conducting the hearing may be advised on matters of procedure and fairness by a Business Support Officer.

5.4.3 The employee, assisted by their representative, if any, shall be given adequate opportunity to

put forward an explanation and/or defence.

## 5.5 Action following a Disciplinary Hearing

5.5.1 Any disciplinary action shall normally be notified or confirmed in writing within five working days of the hearing and the letter notifying or confirming such action shall be handed to the employee personally or sent by recorded delivery. A copy of this letter shall be sent to the employee's representative, if any.

5.5.2 If, following a disciplinary hearing, the nominated person considers that no formal disciplinary action is justified, they shall inform the employee accordingly and in these circumstances no documents relating to the hearing shall be placed on the employee's personal file.

## 6. Oral warning

6.1 In the case of a minor offence relating to an employee's conduct or performance the appropriate nominated person shall give an oral warning to the employee and inform them that this warning constitutes the first stage in the formal procedure. The employee shall be informed of the reason(s) for the warning and of the likely consequences of further offence(s). The employee shall also be informed of the date from which the warning will normally be disregarded for disciplinary purposes, the date the warning will be expunged if no further disciplinary action is taken and the right of appeal against an oral warning.

6.2 A written record of the warning shall be made on a 'Record of Oral Warning' form (see Appendix 2). A copy of this record shall be placed on the employee's personal file and a further copy given to the employee.

## 7. Written warning

7.1 A written warning may be issued where:

- an employee who has been issued with an oral warning fails to achieve and maintain the required improvement in conduct or performance or where a further act or omission warranting disciplinary action occurs, or
- the misconduct or failure in performance is considered to be sufficiently serious to warrant this form of disciplinary action.

7.2 A letter of formal warning shall be issued in the name of the person who conducted the disciplinary hearing and shall state:

- that a formal written warning is being given;
- the nature of the unsatisfactory matter(s) dealt with at the hearing;
- the date of any previous oral warning where appropriate;
- the action required by the employee to remedy the matter;

- that subsequent failure(s) in conduct or performance will normally result in more serious disciplinary action;
- that a copy of the warning letter will be placed on the employee's personal file;
- the date from which the warning will normally be disregarded; and
- the employee's right of appeal.

## **8. Final written warning**

8.1 A final written warning may be issued where:

8.2 an employee who has been issued with a written warning fails to achieve and maintain the required improvement in conduct or performance or where a further act or omission warranting disciplinary action occurs; or

8.3 the misconduct or failure in performance is of a serious nature warranting this form of disciplinary action.

8.4 A letter of final warning shall be issued in the name of the person who conducted the disciplinary hearing. The letter shall contain all the information described in paragraph 5.2 and in particular shall state that any subsequent failure in conduct or performance will normally result in dismissal.

## **9. Punitive disciplinary action**

9.1 Punitive disciplinary action may be taken where:

- following a final warning, the employee fails to achieve and maintain the required improvement in conduct or performance or a further act or omission warranting disciplinary action occurs, or
- a failure in conduct or performance occurs of a sufficiently serious nature to justify such disciplinary action without prior warning(s).

9.2 Punitive disciplinary action refers to any of the following sanctions:

- the withholding of an annual increment in conjunction with a final written warning;
- suspension without pay for a period normally not exceeding three working days, in conjunction with a final written warning;
- demotion and/or transfer to another job, place of work or service, in conjunction with a final written warning;
- dismissal with due notice; or
- summary dismissal i.e. dismissal without notice, only in cases of gross misconduct (see section 8).

9.3 Where punitive disciplinary action is taken, the decision shall be notified or confirmed in writing in the name of the person who conducted the disciplinary hearing and the letter shall:

- refer to previous warnings, if appropriate;
- state clearly the punitive disciplinary action taken and the effective date;
- specify the reason(s) for this action;
- refer to the employee's right of appeal and indicate the date by which notice of appeal should be received; and
- where appropriate, refer to the employee's right to submit a claim of unfair dismissal to an Employment Tribunal and indicate the time limit for submission of such a claim.

## 10. Gross misconduct

10.1 Under this disciplinary procedure an employee shall normally be given a final written warning regarding their conduct or performance before dismissal is contemplated. However, the Company reserves the right to terminate an employee's employment summarily without notice or pay in lieu of notice in cases of gross misconduct.

10.2 For the purpose of this procedure gross misconduct is behaviour of such a nature that the Company is unable to tolerate the continued employment of the individual concerned. The following offences are examples of gross misconduct:

- Theft of any property or facilities belonging to the Company or any employee
- Falsification of reports, accounts, expenses claims or self-certification forms
- Refusal to carry out duties or reasonable instructions
- Having illegal drugs at your place of work, on your person or otherwise in your possession, custody or control on the Company's premises
- Serious breach of Company rules or conduct (whether or not committed at work) which is likely to bring serious discredit to the Company
- Violent, dangerous or intimidatory conduct

10.3 These examples are not exhaustive or exclusive and offences of a similar nature will be dealt with under this procedure.

10.4 Where gross misconduct is alleged, the Company may suspend the employee on full pay pending further investigations into the circumstances of the case, and/or when it is considered to be undesirable for the employee to remain at work prior to the disciplinary hearing. Suspension in these circumstances shall not be regarded as a form of disciplinary action.

## 11. Appeals against disciplinary action

11.1 Appeals may be made against any form of disciplinary action and shall be submitted in

writing, indicating the grounds of the appeal, within ten working days of the employee receiving confirmation of the disciplinary action.

11.2 Appeals shall be heard as soon as possible and normally within ten working days of receiving the written notice of appeal.

11.3 A more senior person than the person who issued the original warning shall hear appeals, wherever reasonably possible. The employee shall be given at least three working days' notice in writing of the appeal hearing and shall be informed of their right to be accompanied at the hearing by a trade union official or a work colleague.

11.4 The decision shall, if possible, be made known to the employee at the end of the appeal hearing and shall in any case be confirmed in writing within three working days. There shall be no further right of appeal.

## 12. Expiry of warning

12.1 Warnings and other formal disciplinary action short of dismissal shall normally be disregarded for disciplinary purposes after a period of satisfactory employment. The relevant periods shall be as follows:

oral warnings	to be disregarded after <b>six</b> months
written warnings	to be disregarded after <b>nine</b> months
final written warnings	to be disregarded after <b>twelve</b> months
punitive disciplinary action short of dismissal in conjunction with a final warning	to be disregarded after <b>eighteen</b> months

12.2 A warning/disciplinary action shall not be disregarded however if further disciplinary action is taken against an employee before the date of expiry. In these circumstances, the record shall remain on the employee's record for a further period in accordance with the above provisions commencing from the date the further disciplinary action was taken.

## 13. Time limits

13.1 The time limits contained within this procedure may be varied by consultation.

**APPENDIX 1: RECORD OF COUNSELLING**

*(Please complete in BLOCK capitals)*

Employee's Name:

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Position: .....

**Counselling:**

Date of meeting: .....

**Matters Discussed:**



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**Action required by employee:**

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**Action required by manager (if any):**

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**Monitoring arrangements:**

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Manager's Name:

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Signed: ..... Date: .....

**A copy of this record should be given to the employee.**

**This is in accordance with the Data Protection Act 2018 (DPA) which incorporates the agreed provisions of the EU General Data Protection Regulation (GDPR). This record should be treated as confidential.**

**(NB - The new Data Protection Act 2018 (DPA) applies to most HR records, whether held in paper, or digital format. Data mustn't be kept any longer than is necessary for a legitimate purpose).**

**APPENDIX 2: RECORD OF ORAL WARNING**

*(Please complete in BLOCK capitals)*

Employee's Name:  
.....  
Position: .....

**Oral Warning:**  
Reason(s) for Issuing Oral Warning:  
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.....  
Date Issued: .....  
Date to be Disregarded: .....

I confirm that I issued an oral warning as indicated above in accordance with the Company's Disciplinary Procedure.  
Manager's Name:  
.....  
Signed: ..... Date: .....

**A copy of this Record of Oral Warning should be given to the employee.**