

HUMAN RESOURCES POLICY

DISCIPLINARY

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Policy Validity Statement
This policy is due for review on the latest date shown above. After this date, policy and process documents may become invalid. Policy users should ensure they are consulting the currently valid version of the documentation.

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1. POLICY STATEMENT

- 1.1 The Disciplinary Policy applies to all staff and is in accordance with all legal requirements and ACAS guidance. The policy aims to encourage employees to achieve and maintain the required standards of conduct, performance and attendance. It ensures fairness and consistency in the treatment of individuals. In cases where an employee fails to attain the required standard the disciplinary policy will be instigated and this may result in disciplinary action.
- 1.2 Disciplinary issues concerning the Accountable Officer or Senior Officers will be referred to the Governing Body of the CCG. Cases will be progressed by the Governing Body in accordance with the principles and procedures set out in this policy.

2. PRINCIPLES

- 2.1 Alleged breaches of conduct, performance or attendance will be fully investigated before any disciplinary action is taken and wherever possible, the manager will attempt to resolve the matter through informal discussion with the employee.
- 2.2 Managers considering whether or not an issue should be progressed to a disciplinary hearing should discuss the matter with an HR Representative before making a decision.
- 2.3 All cases of suspected fraud within the CCG must initially be referred to the Chief Finance Officer and Local Counter Fraud Specialist prior to a full investigation being initiated as required under the Standing Financial Instructions. This is to assess the case and exercise discretion as to the need to involve others or whether to allow the matter to be dealt with internally. If the latter is preferred, the following procedure will apply (Please refer to the Freedom to Speak Up: Raising Concerns Policy).
- 2.4 No disciplinary action will be taken against a trade union representative without firstly discussing with the relevant full time officer.
- 2.5 Employees will be informed in writing of the issues causing concern and will be given the opportunity to present their views before any decision is made at a disciplinary hearing.
- 2.6 Employees are entitled to be accompanied at all formal meetings by a Trade Union Representative or work colleague.

If the employee has been requested to attend a disciplinary hearing they must inform the Chair of the Disciplinary Panel of their chosen companion, at least 2 working days in advance of the meeting.

The employee may not insist on being accompanied by a colleague whose presence would prejudice the meeting or who might have a conflict of interest. It would also be unreasonable for an employee to ask to be accompanied by a colleague from a remote location when someone suitably qualified was available on site. If there is any dispute regarding the chosen companion that cannot be resolved, advice should be sought from HR.

- 2.7 Employees are required to attend all meetings relating to the disciplinary process. If they, or their companion, are unable to attend the arranged meeting, they must give notice and reasons why they are unable to attend. The meeting will then be rescheduled to a mutually convenient time, within 10 working days of the original date wherever possible. However, where an employee fails to attend such meetings without reasonable grounds, the meeting

may be held in their absence. The employee will be informed of this in writing.

- 2.8 If an employee has a valid objection to the person appointed to undertake the investigation or to hear the case, they must raise this objection in writing, clearly stating their reasons, to the Head of HR.
- 2.9 The level of disciplinary action to be taken will be determined according to the seriousness and nature of the alleged misconduct. Once the formal disciplinary procedure has been initiated, subsequent misconduct within the warning period may lead to further, and perhaps more serious disciplinary action, which may ultimately lead to dismissal.
- 2.10 Warnings are active from the date of issue for the periods detailed in Section 13, except in exceptional circumstances.
- 2.11 No employee will be dismissed for a first instance of misconduct. Summary dismissal may occur in the case of Gross Misconduct.
- 2.12 The employee will have the right of appeal against any disciplinary warning or sanction issued in the formal stages of the procedure.
- 2.13 The CCG will ensure that all managers who are responsible for disciplinary issues are suitably trained and have the necessary knowledge and skills.
- 2.14 Should an employee raise a complaint either under the Grievance Policy or the Harassment and Bullying at Work Policy whilst subject to action under this policy, the disciplinary process may be temporarily suspended in order to deal with the complaint. Where an initial investigation into the complaint, conducted by another manager, finds that the grievance and disciplinary cases are related, it may be appropriate to deal with both issues concurrently. If the grievance complaint is found to have no bearing on the matters being investigated under this policy then the disciplinary proceedings will continue from the point at which they were suspended. In any event, advice should be sought from a HR representative
- 2.15 Data should be held and destroyed in accordance with the provisions of the Data Protection Act 1998 and any Authority policy which derives from that Act.
- 2.16 All matters relating to any part of this procedure will be treated in strict confidence. Any breach of this confidentiality may render those responsible liable to disciplinary actions. However, it must be remembered that legislation requires the accused to be made aware of the allegations against them and the name(s) of those making the allegations, along with witnesses.

3. SCHEME OF DELEGATION

Informal procedure	Line Manager or equivalent level manager from elsewhere within the organisation.
Formal procedure	Line manager or equivalent level manager from elsewhere within the organisation, or the line manager's direct manager if the line manager has been previously involved or implicated, and an HR representative.
Appeal following formal procedure	Line Managers manager or equivalent who has not previously been involved or implicated and an HR representative.
Dismissal Hearings	Chaired by a senior manager with authority to

	dismiss plus one other manager and an HR representative.
Appeal against dismissal	Chaired by a Chief Officer/Chief Operating Officer plus one other manager and an HR representative.

4. EQUAL OPPORTUNITIES

- 4.1 In applying this policy, the organisation will have 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, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.
- 4.2 As part of the CCG's equal opportunities monitoring, all disciplinary hearings are monitored on a rolling annual basis. Subsequently information may be held on the disciplinary monitoring register longer than the duration of the warning itself.

5. MONITORING

- 5.1 The policy and procedure will be reviewed periodically by Human Resources in conjunction with operational managers and Trade Union representatives. Where review is necessary due to legislative change, this will happen immediately.

6. ASSOCIATED DOCUMENTATION

- 6.1 The following documentation may be linked to this Policy:
- HR11 Grievance Policy
 - HR12 Harassment & Bullying at Work Policy
 - HR16 Managing Work Performance Policy
 - HR02 Absence Management Policy
 - ACAS Code of Practice

PART 2 – DISCIPLINE PROCEDURE

7. PROCEDURE

- 7.1 If an employee fails to meet the required standards of performance, conduct or attendance, they may be subject to this disciplinary procedure. At all stages the employee will be told of the reason for using the procedure. Management will ensure that the changes in performance, conduct or attendance required and the timescales involved are reasonable, achievable and where possible agreed by all parties. Further misconduct, or expiry of the review period without improvement, may lead to progressive disciplinary action which may ultimately result in dismissal. This procedure may also apply where cases of unacceptable conduct take place outside the working environment.

8. INFORMAL STAGES

- 8.1 Where there is an identified failure in performance, the procedure in the Managing Work Performance Policy will be implemented. Where unsatisfactory progress is made towards the agreed performance level, the formal stages of the Disciplinary Policy will apply.
- 8.2 Where levels of attendance are a cause for concern, the procedure in the Absence Management Policy will be implemented.
- 8.3 In cases of suspected minor misconduct in relation to conduct or behaviour, the following process will be followed:-
- 8.3.1 The employee's line manager will speak to the individual, in private, as soon as possible after an issue comes to light. This will be a two-way discussion aimed at establishing the circumstances and encouraging improvement.
- 8.3.2 If, during the discussion, it becomes evident that there is no problem the manager will confirm to the employee that no formal disciplinary action will be taken.
- 8.3.3 Where an improvement in conduct is required, the manager will make sure the employee understands what needs to be done, and over what period of time. The required improvement, the length of the review period and any sanctions imposed, for example withdrawal of flexi time, will be confirmed in writing following the meeting and the letter will also include the consequences of a failure to improve.
- 8.3.4 Further meetings will be held to review progress during, and at the end of, the review period. Notes of all meetings will be taken and agreed.
- 8.3.5 If, during the initial discussion, it becomes obvious that the matter may be more serious, the meeting will be adjourned and the employee advised that an investigation will be instigated under the formal stages of the disciplinary procedure.
- 8.4 If managed informally there is no right to be accompanied by a staff side representative or workplace colleague to the meeting with the line manager.

9. FORMAL STAGES

- 9.1 Before any disciplinary hearing is held, an investigation will take place to establish the facts of the case. This will normally be in the form of a fact find meeting where notes will be taken. However in exceptional circumstances and with advice from an HR Representative, other forms of evidence may be sufficient. For example in the case of short-term persistent absence, absence records, return to work interviews and Occupational Health reports may

be used as the basis for disciplinary proceedings.

9.2 Normally the investigation process should take no longer than 4 weeks. Where it is not possible to complete the process within this timescale, the reasons for the delay will be recorded and the expected date for completion of the investigation process communicated in writing to all parties involved.

9.3 An employee is entitled to be accompanied at the investigation meeting by a Trade Union representative or a workplace colleague.

Managers Authorised to Take Disciplinary Action

9.4 To ensure fairness and impartiality, where reasonably practicable, the disciplinary panel should consist of no less than two members and should comply with the Scheme of Delegation outlined at Section 3.

9.5 Where dismissal is a possibility, the disciplinary panel will be chaired by a manager authorised to dismiss.

9.6 The outcome of a disciplinary hearing will generally fall into one of the following categories:-

- Case dismissed
- No action required
- The employee is required to attend counselling or retraining
- First written warning
- Final written warning
- Dismissal

Also see 9.14 of the procedure for additional sanctions.

First Written Warning

9.7 If the issue is serious, a First Written Warning will normally be issued and will be kept on the employee's personal file for 12 months. A copy of the written warning will be kept on file but should be disregarded for disciplinary purposes after 12 months from the date of issue.

Final Written Warning

9.8 If the issue is more serious or if there is still an active First Written Warning in place and insufficient improvement has been made or further misconduct occurs, a Final Written Warning will normally be issued and will be kept on the employee's personal file for 24 months. A copy of the written warning will be kept on file but should be disregarded for disciplinary purposes after 24 months from the date of issue.

Dismissal with Notice

9.9 If, within 12 months of the issue of a Final Written Warning, further misconduct occurs or insufficient improvement has been made, the employee will normally be dismissed with notice.

9.10 The employee will be provided with written reasons for dismissal, the date on which the employment will terminate, their entitlement to pay, and the right of appeal.

9.11 The organisation reserves the right to make a payment in lieu of notice.

Summary Dismissal

- 9.12 Where behaviour or misconduct is sufficiently serious to constitute gross misconduct (see examples in Appendix A) the employee will normally be summarily dismissed - i.e. without notice. In exceptional cases an alternative sanction may be applied. Please refer to section 9.14 of the procedure.
- 9.13 The employee will be provided with written reasons for dismissal, the date on which the employment will terminate and the right of appeal.

Potential Additional Sanctions

- 9.14 Additional sanctions may be included after full discussion with a HR representative who will be able to advise on the appropriateness, equity and viability of any further sanction. These can include, but are not limited to:-
- Demotion or transfer to another job or location
 - Deferred increment
 - Loss of privileges e.g. removal of right to self-certificate absence and the requirement for all absences to be covered by a medical certificate, removal of flexi-time.

10. SUSPENSION

- 10.1 Suspension does not constitute disciplinary action or sanction. It is only to be invoked when an individual's continued presence at work places themselves/other person(s) at risk, or hampers any investigation. If appropriate, suspension should be effected as soon as possible after the matter to be investigated comes to light or a need for suspension is identified. Suspension will always be on full pay and should be for as brief a period as possible. It is expected that suspension will be no longer than 4 weeks, but may be extended in exceptional circumstances. Employees who are suspended will be informed in writing of the reasons for the suspension. The necessity or otherwise for suspension, will be agreed between the manager and a HR representative.
- 10.2 Should it be concluded, following investigation, that no further action is necessary, a briefing session should be held between the individual, their trade union representative or work colleague if required, and their manager prior to a return to work.

11. THE DISCIPLINARY HEARING

- 11.1 A disciplinary hearing (see Appendix B) will normally be held by a panel consisting of a manager, who has not been previously involved in the matter, who will act as the Panel Chair. They will be accompanied in accordance with the Scheme of Delegation outlined in Section 3. Should the attendance of a HR representative be required, their role will be to provide advice on HR policies and employment legislation and to ask questions to obtain clarification on any issues that are discussed or new relevant information disclosed.
- 11.2 Before the disciplinary hearing the employee will be advised in writing of the purpose of the meeting and details of the complaint or allegation being considered, covering all issues to be discussed. The individual will be given a minimum of 5 working days notice of the disciplinary hearing. If the individual, or their chosen companion, is not available to attend on the date proposed, the organisation will endeavour to offer an alternative reasonable date within 10 working days of the original date wherever possible. This meeting will normally only be re-arranged once, except in exceptional circumstances.

- 11.3 Should either party wish to call any witnesses to the disciplinary hearing they must give at least 2 working days notice to the Disciplinary Panel, and have full responsibility for arranging the attendance of these witnesses.
- 11.4 All relevant facts and evidence will be made available to the employee at least 5 working days prior to the disciplinary hearing. Additional information gathered by the employee, that they wish to present at the meeting, must also be made available to the disciplinary panel at least 2 working days prior to the meeting.
- 11.5 Either party may present evidence including details of previous relevant warnings, witness statements, call witnesses and have the opportunity to ask questions.
- 11.6 Adjournments may be called by the panel at any time during the hearing should new facts emerge which require investigation or clarification. If the employee becomes distressed an adjournment may be called in order for them to regain their composure. Should the employee be unable to continue, the meeting will be adjourned to a later date.
- 11.7 An adjournment must be held in order that there can be a period of dispassionate reflection by the Disciplinary Panel to consider what action, if any, is to be taken. Where possible, both parties will be verbally informed of the outcome after the adjournment.
- 11.8 The employee will be advised in writing of the outcome of the disciplinary hearing within 7 working days unless a longer period is specified and can be justified. If disciplinary action is taken, the employee will be informed of the required improvements which are necessary and if applicable, details of timescales for achievement, the duration of the warning and the consequence of a failure to improve performance as required. The letter must include the date of the disciplinary hearing, the reason for issuing the warning as well as details of any sanctions which may be imposed. It should also be noted whether the employee invoked their right to be accompanied. The right of appeal will also be included.

12. APPEALS

- 12.1 An employee in receipt of a disciplinary warning or notice of dismissal has the right of appeal.
- 12.2 Appeals, outlining the grounds on which the appeal is being made, must be lodged in writing to the person specified in the notification letter within 5 working days of the receipt of the written notice of disciplinary action or dismissal. In exceptional circumstances this period may be extended.
- 12.3 The employee must submit details of their grounds for appeal, plus any new evidence they wish to present, to the Appeal Hearing Panel at least 2 working days prior to the appeal meeting.
- 12.4 Appeals will be heard within 5 weeks of receipt of the letter requesting the appeal but either party may, with the consent of the other and in exceptional circumstances, be entitled to extend this period.
- 12.5 The employee must be given at least 5 working days' notice of the date of the appeal hearing.
- 12.6 The Appeals Hearing Procedure (Appendix C) must be followed.

- 12.7 Appeals will normally be heard by a more senior manager to the person taking the first instance disciplinary action unless directed otherwise by the Chief Officer. All appeals will include a representative of the Human Resources Department wherever possible.
- 12.8 The employee will have the right to be accompanied at the Appeal Hearing by either a staff side representative or workplace colleague.
- 12.9 Both parties must provide to the Appeal Hearing Panel, a full written statement of case including the grounds upon which the appeal is presented/resisted, with copies of any documents the party concerned intends to use in evidence, and, the identities of any witnesses the party concerned intends to call, at least 2 working days prior to the Appeal Hearing.
- 12.10 The decision of the panel will be communicated to both parties verbally, following the adjournment wherever possible, and in any case will be confirmed later in writing (again to either party), no later than 5 working days after the Appeal Hearing.
- 12.11 The decision of the appeal panel is final and there is no further internal appeal.

13. DURATION OF WARNING / RECORDS

- 13.1 The duration of warnings will normally be as follows:-

First written warning	12 months
Final written warning	24 months

In exceptional circumstances and in conjunction with advice from an HR Representative, a longer timescale may be specified at the outcome of the disciplinary meeting.

- 13.2 A copy of the warnings will be kept on file but should be disregarded for disciplinary purposes after 12/24 months from the date of issue.

APPENDIX A

Examples of Gross Misconduct

Please note this list is not exhaustive and there are other examples of gross misconduct.

- Behaviour bringing the organisation into disrepute
- Physical violence
- Contravention of the organisations Equality and Diversity policy, including bullying and harassment
- Fraud or falsification of records (e.g. application forms, CVs, sickness forms, overtime and expenses claims)
- Theft or fraudulent misuse of the organisations property or name (e.g. phones, cars or computers)
- Deliberate damage to organisations property
- Incapability to work through substance misuse
- Negligence which causes loss or damage to organisations property or injury to other personnel
- Illegal activity on the organisations premises or with the organisations property
- Infringement of health and safety rules
- Breaches of confidence
- Soliciting or accepting a bribe or secret commission
- Improper use of email or Internet facilities or other methods of communication and contravention of internal divisional policies in place.
- Sharing commercially sensitive business data/intellectual property rights outside of the Organisation
- Failure to declare a conflict of interest or manage a declared conflict which results in unfair gain to the employee or an associated third party
- Anything which calls into question an employee's honesty or integrity.

CONDUCTING A DISCIPLINARY HEARING

A disciplinary hearing will normally be held by a panel consisting of a manager, who has not been previously involved in the matter, who will act as the Panel Chair. They will either be accompanied by another appropriate manager or a HR representative, or in some cases both. Should the attendance of a HR representative be required, their role will be to provide advice on HR policies and employment legislation and to ask questions to obtain clarification on any issues that are discussed or new relevant information disclosed.

The Disciplinary Hearing has the following stages:

1. Opening the meeting by Panel Chair
2. Management side present their case (summary of allegation by the investigating officer), including calling of any witnesses
3. Employee side, then the Disciplinary Panel, will have the opportunity to ask questions
4. Employee side to present their case, including calling of any witnesses
5. Management side, then the Disciplinary Panel, will have the opportunity to ask questions
6. Summing up by management side, then by employee side
7. Adjournment
8. Action to be taken (if any)
9. Establishment of a review date (if appropriate)

Opening the Disciplinary Hearing

All employees are entitled to be accompanied by their Trade Union representative or a work colleague. Where an employee is not accompanied, the employee must be reminded of this right, and if declined, this must be recorded.

Those 'hearing' the disciplinary must introduce those present and outline the reasons for the disciplinary meeting taking place (the reason/s outlined in the invite to disciplinary letter) and the format the meeting will take.

Summary of Allegation

At this stage the investigating officer(s) must summarise the case on behalf of management. The investigating officer(s) presenting the case must adhere to the facts and not introduce opinions, hearsay or issues that have not previously been mentioned. All documentation that will be used as evidence (including previous relevant warnings and witness statements where applicable) will already have been made available to the individual prior to the disciplinary hearing taking place (copies will have been sent with the invite to disciplinary meeting letter).

Should a new matter arise during the course of the disciplinary meeting then the Disciplinary Panel should adjourn in order that consideration may be given to the appropriateness of the introduction of this new matter. To avoid unnecessary duplication of the process as well as ensuring fairness, it may be more beneficial to adjourn the disciplinary meeting in order that further investigations may be carried out in relation to the new matter.

The aim of the disciplinary meeting is to seek verification and clarification about the issues of concern, through questions. Where it is appropriate to call witnesses, either party may call and question them.

After the investigating officer has stated their case the employee will be given the opportunity to ask questions and state their case. The employee's representative will be able to ask questions for clarification purposes.

If the disciplinary hearing is dealing with multiple issues, each issue should be addressed in turn and the employee and/or their representative be allowed to state their case in relation to each issue as it is addressed.

Exploration of any differences in facts, as they appear to the manager and employee should be carried out in a constructive manner in order to gain an understanding of the facts which are, as far as possible, acceptable to both manager and employee.

The investigating officer should remain present during the disciplinary hearing to allow for any questions.

Both parties will be given the opportunity to sum up their case if they so wish. The summing up shall not introduce any new matter. If at any stage new facts are alleged or new evidence produced, the Disciplinary Panel may adjourn the meeting (of its own volition or at the request of one of the parties) for so long as it thinks fit.

Adjournment

Before any decision is taken, it is necessary to adjourn the disciplinary hearing to give adequate consideration to the facts as they have been presented and the responses that have been given to the allegations, including any mitigating circumstances. At this stage both parties will be asked to leave the room and the panel must decide the facts of the case, with advice from a HR representative, where appropriate, and whether the behaviour requires disciplinary action to be taken and if so, at what level.

Where possible, an indication of the length of time of the adjournment should be given, including the reasons for the adjournment, i.e. to consider what action to take, if any.

The disciplinary hearing may also be adjourned to consider other issues, e.g. to direct further investigations to take place or to investigate new information/facts that have been brought to light.

There is no set time for an adjournment and adjournments can be called at any time during the disciplinary meeting, by either party.

Taking disciplinary action is not a matter to be taken lightly and should only be taken if it is to be constructive in attempting to produce the desired behaviour. Managers will also need to consider, if disciplinary action is to be taken, whether any other sanctions will be attached to the warning (see Section 3.14).

Action

When the disciplinary hearing is reconvened the Panel Chair should explain that consideration has been given to all of the issues raised at the beginning of the hearing, and all of the facts and issues raised during the course of the hearing. The Panel Chair must then outline what action, if any, will be taken including any sanctions.

It is important that where a warning/sanction is given, the employee is informed of the length of time it will remain on their record, their right of appeal, the procedure that will be followed in relation to confirming the action in writing and any arrangements for the review of sanctions imposed.

APPEALS HEARING PROCEDURE

Appeals will normally be heard by a more senior manager to the person taking the first instance disciplinary action. All appeals will include a representative of the Human Resources service, in an advisory capacity, wherever possible.

An employee may choose to appeal if, for example:

- They think a finding or penalty is unfair
- New evidence comes to light
- They think the disciplinary procedure was not used correctly

Should either party require an adjournment, this request should be made to the Appeal Hearing Panel, with an indication of the length of time required.

The procedure for an Appeal Hearing is as follows:

1. The appellant will present their case first, detailing the grounds for their appeal including the calling of any witnesses.
2. The management side will then be able to ask any questions about the case the appellant has presented
3. The appeal panel members will also have an opportunity to ask any questions.
4. The management side will then be asked to present their case, explaining the reasons for the action taken, including the calling of any witnesses.
5. The appellant may then wish to ask management side any questions about the case.
6. The appeal panel members will also have the opportunity to ask any questions.
7. Both parties will have the chance to sum up their case.
8. There will then be an adjournment when both sides will be asked to leave the room while the appeal panel consider the information they have heard and reach their decision.
9. The decision of the panel will be communicated to both parties verbally, following the adjournment wherever possible, and in any case will be confirmed later in writing (again to either party), no later than 5 working days after the Appeal Hearing.