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CORPORATE REPORT

February 2016

<b>Policy Title:</b> Disciplinary Policy and Procedure	<b>Policy Number:</b> 007
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<b>Lead Person:</b> HR	<b>Approved by:</b> Board

## 1. Introduction

This policy and procedure applies to all staff employed by the Commission.

The Commission's aim is to ensure consistent and fair treatment of all employees. With this in mind, the purpose of the policy is to agree set standards of conduct, attendance and job performance and to help and encourage all employees to achieve and maintain these standards.

It is hoped that many problems will be resolved without recourse to the disciplinary policy and therefore the procedure will only be initiated after all reasonable efforts have been made or in cases of gross misconduct.

## 2. Principles

- No disciplinary action will be taken against an employee until the case has been fully investigated. Where an investigatory meeting is held solely to establish the facts of a case, it will be made clear to the employee involved that it is not a disciplinary meeting.
- In misconduct cases, where practicable, different people will carry out the investigation and disciplinary hearing
- In some cases a period of suspension with pay will be necessary while an investigation takes place. This period will be as brief as possible, kept under review and any such suspension will not be considered a disciplinary action.
- If disciplinary action is to be taken it will always have 3 main stages:
  - ✓ letter
  - ✓ meeting
  - ✓ appeal
- The disciplinary procedure will be carried out as quickly as possible, consistent with a thorough investigation of the facts.
- At every stage in the process, employees will be advised, in writing, of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made.
- At all stages the employee will have the right to be accompanied by a trade union representative or work colleague at an investigatory meeting or during a disciplinary interview.

- No employee will be dismissed for a first breach of discipline except in the case of proven gross misconduct when the penalty will be dismissal without notice or payment in lieu of notice.
- An employee will have the right of appeal against any disciplinary penalty imposed.
- The procedure may be implemented at any stage if the employee's alleged misconduct warrants such action. (i.e. first written warning, final written warning or dismissal)
- Procedures will be followed without discrimination on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation
- Where appropriate, instances of malpractice will be reported to any professional body to which the employee belongs. This will occur even in the situation when an employee resigns prior to a disciplinary hearing.
- The Commission is also bound to comply with any practice restrictions placed on an employee by a professional body and that could lead to dismissal if this cannot be accommodated within their duties.

### **3. Procedure**

#### **3.1 Informal Process**

Minor issues of misconduct or unsatisfactory performance will be dealt with informally by an employee's Manager with assistance from Human Resources if necessary. The employee will be counselled about the standards of performance expected and improvements to be made. Counselling does not form part of the disciplinary procedure.

Examples of misconduct or unsatisfactory performance that will invoke the various stages of the disciplinary procedure are outlined in ***Appendix 1***.

#### **3.2 Formal Process**

If informal action does not bring about an improvement or the misconduct or unsatisfactory performance is considered to be too serious to be classed as minor e.g. cases of gross misconduct, the formal process will be initiated. The first stage in any formal action is to conduct an investigation into the issue. A manager should be appointed as the investigating manager.

##### ***a) Letter informing the employee of the issue***

The employee will be advised, in writing, of their alleged misconduct or issue with their performance and the reasons why this is not acceptable. The letter may also invite them to a investigatory meeting, if this is deemed necessary. If a meeting is necessary this meeting will usually take place within 5 working days of receipt of the letter. The employee will agree the timing and location of the meeting and they have the right to be accompanied at the meeting by a trade union representative or a work colleague. This letter will make it clear to the employee that the investigation into the matter is to determine whether this will be progressed to a disciplinary hearing, it will not itself comprise disciplinary action.

**b) Investigation**

It is important to carry out necessary investigations of potential disciplinary matters without unreasonable delay to establish the facts of the case. In some cases this will involve an investigatory meeting with the employee, in other cases it will be the role of the investigating manager to collate evidence to establish whether there is a disciplinary case to answer. If it is established through the investigation that there is no case to answer, then the employee should receive notification of this in writing.

**c) Progressing the matter to a Disciplinary Hearing**

If it is decided as a result of the investigation, that there is a disciplinary case to answer, the employee should be notified of this in writing. The employee will be advised, in writing, of their alleged misconduct or issue with their performance and the reasons why this is not acceptable. The letter will also invite them to a disciplinary hearing. This meeting will usually take place within 5 working days of receipt of the letter. The employee will agree the timing and location of the meeting and they have the right to be accompanied at the meeting by a trade union representative or a work colleague.

**d) Disciplinary Hearing**

At the hearing the employee's Manager will outline the details of the alleged misconduct or performance issue and go through the evidence gathered. The employee will be allowed to explain their case, ask questions, present evidence and call witnesses.

If the employee cannot attend the hearing once arranged they should inform the Commission in advance, where possible. If this is due to circumstances outside their control and unforeseeable then the Commission will re-arrange. The hearing will similarly be re-arranged if the employee's Manager cannot attend. In special circumstances such as long-term sickness absence or pre-arranged leave another Commission Manager may attend the meeting in the place of the employee's own Manager. Where an employee is persistently unable or unwilling to attend a disciplinary hearing without good cause, the Commission will hold a hearing in their absence based on evidence available resulting from the investigation process.

The employee should be given copies of any documents produced at the meeting.

**e) Decision and action**

Following the hearing, the Manager in attendance will decide whether disciplinary action is justified or not. Where it is decided that no action is justified the employee will be informed verbally following the hearing and then in writing within 5 working days of the hearing having taken place.

Where it is decided that disciplinary action is justified the Manager who undertook the hearing will consider what form this will take. The employee's disciplinary and general record, length of service and actions taken in any previous similar case will all be taken into account. The explanations given by the employee at the hearing and whether the intended disciplinary action is reasonable under the circumstances will also be considered. This is likely to be done in conjunction with Human Resources to ensure consistency of action across the Commission in similar cases. The employee will be informed of the decision in writing within five working days of the hearing.

### **3.2.1 First Formal Action**

#### **a) *First formal action – unsatisfactory performance***

Following a hearing, an employee who is found to be performing unsatisfactorily should be given a written note setting out:

- The performance problem;
- The improvement that is required;
- The timescale for achieving this improvement;
- A review date; and
- Any support their Manager and the Commission will provide to assist them

The timescale for achieving an improvement and any review date are not established as part of this policy as each disciplinary situation is different.

Reasonable time must be given for an employee to improve their performance, taking into account any extra training or support agreed with their Manager at the disciplinary hearing. Timings will vary depending on the role undertaken by the employee and what issues there are with regards to their performance; advice can be sought from Human Resources as to suitable timescales. Any review period will always be agreed with the employee so that they are comfortable with the timescales established for improvement of performance. In addition, any review period will not extend beyond a warning period.

The employee should be informed that the note represents the first stage of a '**formal procedure**' and that failure to improve could lead to a final written warning and, ultimately, dismissal. A copy of the warning will be kept but will be disregarded for disciplinary purposes after six months, subject to satisfactory performance in the interim. The employee will be informed that he or she may appeal against the decision within 5 working days of receipt of the letter.

***Appendix 3 outlines the levels of management responsibility for issuing a warning.***

#### **b) *First formal action – misconduct***

Where, following a disciplinary hearing, an employee is found guilty of misconduct; the first step will be to give them a written warning setting out the nature of the misconduct and the change in behaviour required. The employee will be informed that the warning is part of the formal disciplinary process and what the consequences will be of a failure to change behaviour. Failure to change behaviour could lead to a final written warning and, ultimately, dismissal.

A copy of the warning will be kept but will be disregarded for disciplinary purposes after six months, subject to satisfactory performance in the interim. The employee will be informed that he or she may appeal against the decision within 5 working days of receipt of the letter.

***Appendix 3 outlines the levels of management responsibility for issuing a warning.***

### **3.2.2 Final written warning**

If the offence is a serious one, or if a further breach of discipline occurs following the first written warning, or there is a failure to improve or change behaviour in the timescale set at the first formal stage, a final written warning will be given to the employee.

The final written warning will only be given after the employee has been given a chance to present his or her case at a further meeting. This meeting will follow the same procedure as outlined in Sections 3.2a) - e) and again the employee will be informed, in writing, before the meeting, of their alleged misconduct or issue with their performance and the reasons why this is not acceptable.

The final written warning will give details of the complaint, the improvement required and the timescale. It will warn that further action, which could result in dismissal, will be considered if there is no satisfactory improvement and will advise of the right to appeal. A copy of this warning will be kept but will be disregarded for disciplinary purposes after 12 months subject to satisfactory conduct and performance in the interim.

Appendix 3 outlines the levels of management responsibility for issuing a warning.

### **3.2.3 Dismissal or other Penalty**

#### **a) Dismissal**

If there is still a failure to improve following a final written warning and conduct or performance is still unsatisfactory, the final stage in the disciplinary process might be dismissal.

In cases of proven gross misconduct, the outcome is likely to be dismissal without notice or payment in lieu of notice (see Section 4).

A dismissal can only legally take place for one of the following reasons:

1. Issues with capability or qualifications
2. Misconduct
3. Illegality or contravention of statutory duties
4. Some other substantial reason
5. Redundancy

A decision to dismiss should only be taken by a manager who has the authority to do so. Appendix 3 outlines the levels of management responsibility for dismissing an employee. The employee will be informed in writing, within 5 working days of the disciplinary hearing, of the reasons for the dismissal, the date on which the employment contract will terminate, the appropriate period of notice and their right to appeal.

#### **b) Other Penalty**

If the employee's contract allows it (or it is mutually agreed) some other penalty such as demotion, disciplinary transfer, or loss of seniority/pay may be imposed as an alternative to dismissal.

## **4. Gross Misconduct**

**4.1** Breaches of discipline regarded as gross misconduct will normally result in dismissal without notice or payment in lieu of notice. Examples of gross misconduct are outlined in **Appendix 2**.

An employee accused of an act of gross misconduct may be suspended from work on full pay, normally for no more than five working days, while the Commission investigates the alleged offence. Such a suspension will only be imposed after careful consideration by an employee's Manager in discussion with Senior Management and Human Resources and will

be reviewed to ensure it is not unnecessarily protracted. Any such suspension is not considered a disciplinary action and does not involve any pre-judgment of the situation. This will be made clear to the employee in writing.

**4.2** In cases where theft or fraud are suspected and criminal sanction is to be sought, the Commission's Internal Auditor will undertake the investigation prior to disciplinary action proceeding.

**4.3** Any criminal offence will be reported to the Police, though the disciplinary process does not have to await the outcome of any criminal proceedings.

**4.4** In the majority of cases, the decision to dismiss, either through the stages of the disciplinary procedure or for gross misconduct, is taken by the Chief Executive or, in their absence, by the Head of Corporate Services. This decision will only be taken after thorough discussion with the employee's Manager (or the Manager attending the disciplinary meeting) and Human Resources.

***Appendix 3 outlines the levels of management responsibility for dismissing an employee.***

## **5. Appeals Procedure**

**5.1** An employee who wishes to appeal against a disciplinary decision should inform the appropriate Manager, detailed in the decision letter, within five working days of receipt of the decision. The employee should clearly outline their grounds for appeal in writing. The appeal will be heard by a different manager from the manager who conducted the disciplinary hearing.

***Appendix 3 outlines the levels of management responsibility for hearing appeals***

**5.2** For appeals against dismissal the Chair or Chief Executive will convene an Appeals Panel. The Chair will convene a panel with Board members and the Chief Executive will convene a panel with other members of the executive team not involved in the original decision. For appeals against dismissal by the Chief Executive, an independent appeals panel will be set up.

**5.3** The Commission will contact the employee with the arrangements for the appeal hearing within 10 working days of receipt of the employee's letter and inform them of their right to be accompanied at the appeal meeting by a Trade Union representative or work colleague.

**5.4** In all appeals both the employee and the manager involved in the disciplinary decision will put their case in writing at least three days prior to the Appeal hearing. Both parties will have the opportunity to put their case in person to the Appeal Panel. Both parties will withdraw while the Appeal Panel makes its decision. Appeal hearings will, wherever possible, be held within 15 working days of the receipt of the appeal letter. The Appeal Panel will give their decision in writing to the employee normally within 10 working days, detailing the reasons for the decision. The appeal decision is final.

## **6. Probationary Periods**

The normal Disciplinary and Grievance procedures do not apply to a decision by the Commission to discontinue employment at or before the end of the 6 month probationary period. However, should a decision be made to discontinue an employee's employment,

they will be informed of their right to write to the Chief Executive outlining their reasons why they disagree. This letter should be sent within seven days of notice of the dismissal decision and the Chief Executive will set up a review meeting with the employee and a senior manager. The employee may be accompanied by a colleague or Trade Union representative at this meeting.

## **7. Protection of Vulnerable Groups (Scotland) Act 2007**

The Protection of Vulnerable Groups (Scotland) Act 2007 led to the creation of a vetting process by Disclosure Scotland which was introduced in 2011. The vetting process introduced a new membership scheme to replace and improve on the existing disclosure arrangements for people working with vulnerable groups. There are two lists as a consequence of this scheme, a list barring people from working with children and a list barring people from working with protected adults. The PVG scheme helps to ensure that those who have regular contact with children and protected adults do not have a history of harmful behavior. On commencing employment, PVG checks will be carried out for identified roles within the Commission, to ensure that the employee is not barred from either list.

Should the Commission receive notification that an existing employee is to be placed on either list, the Commission will immediately remove that employee from any unsupervised work with either children or protected adults depending on the notification. The employee may be subject to a disciplinary investigation and subsequent disciplinary hearing as a consequence of this notification.

If the Commission dismisses an employee or removes an employee from such work because it has upheld allegations that they harmed a child or a protected adult or placed a child or protected adult at risk of harm, the Commission is obligated to make a referral to Disclosure Scotland under the framework of the Protection of Vulnerable Groups scheme. Any referral should only be made with the knowledge and approval of the Chief Executive.



## **Appendix 1**

Examples of misconduct or unsatisfactory performance that may invoke the various stages of the Disciplinary Policy and Procedure include:

- bad behaviour, such as fighting or drunkenness
- unsatisfactory work performance
- harassment and victimisation
- poor attendance record
- unauthorised absence
- poor timekeeping – including misuse/abuse of flexi-time
- breach of minor safety rules
- refusal to obey reasonable instructions
- insubordination
- disloyalty
- breach of IT regulations
- breach of confidentiality
- bringing Commission into disrepute
- failure to identify and reimburse the Commission for personal calls made whilst using Commission mobile phones
- deliberate falsification of travel and subsistence claims

This list is not exhaustive and serves only to illustrate the types of misconduct or unsatisfactory performance that might be dealt with under the Disciplinary Policy and Procedure.

## **Appendix 2**

Acts, which constitute gross misconduct, are those resulting in a serious breach of contractual terms for example;

- theft, fraud and deliberate falsification of records
- physical violence
- unlawful discrimination against any of the 9 strands covered by the Equality Act:
  - age
  - disability
  - gender reassignment
  - marriage and civil partnership
  - pregnancy and maternity
  - race
  - religion or belief
  - sex
  - sexual orientation
- harassment
- deliberate damage to property
- serious insubordination
- misuse of the Commission's property or name
- bringing the Commission into serious disrepute
- serious incapability whilst on duty brought on by alcohol or illegal drugs
- serious negligence which causes or might cause unacceptable loss, damage or injury
- serious infringement of health and safety rules
- serious breach of confidence
- deliberately accessing internet sites containing pornographic, offensive or obscene material (includes during remote working)

This list is not exhaustive and serves only to illustrate the types of misconduct that might be dealt with as gross misconduct under the Disciplinary Procedure.

**Levels of Disciplinary Action and Appeal**

This table illustrates who has responsibility for disciplinary action and who would hear any subsequent appeal

<b>Role</b>	<b>First Warning</b>	<b>Appeal</b>	<b>Final Written Warning</b>	<b>Appeal</b>	<b>Dismissal</b>	<b>Appeal</b>
Chief Executive	Chair	Panel of Board Members	Chair	Panel of Board Members	Chair	Independent Panel
Head of Corporate Services/ Executive Directors	Chief Executive	Board Member	Chief Executive	Chair	Chief Executive	Chair
Practitioner	Executive Team Leader	Chief Executive	Executive Team Leader	Chief Executive	Chief Executive	Chair
Practitioners/Positions that report to Executive Directors	Executive Director	Chief Executive	Executive Director	Chief Executive	Chief Executive	Chair
Reporting to HOCS	HOCS	Chief Executive	HOCS	Chief Executive	Chief Executive	Chair
Reporting to Operations and Improvements Manager	Operations and Improvements Manager	HOCS	Operations and Improvements Manager	HOCS	HOCS	Chief Executive
Reporting to Human Resources Manager	Human Resources Manager	HOCS	Human Resources Manager	HOCS	HOCS	Chief Executive
Reporting to Finance Manager	Finance Manager	HOCS	Finance Manager	HOCS	HOCS	Chief Executive
Reporting to Casework Managers	Casework Manager	Operations and Improvements Manager	Casework Manager	Operations and Improvements Manager	HOCS	Chief Executive
Reporting to Communications Manager	Communications Manager	HOCS	Communications Manager	HOCS	HOCS	Chief Executive

Reporting to Information Manager	Information Manager	HOCS	Information Manager	HOCS	HOCS	Chief Executive
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