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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; to support 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

- The policy sets out to treat all employees, fairly, impartially, promptly and reasonably.
- 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. Consideration will be given if there is an overlap in roles i.e. HR
- 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
- The disciplinary procedure will be carried out as quickly as possible, consistent with a thorough investigation of the facts.
- 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 may 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 will normally be dealt with informally by an employee's Manager with assistance from Human Resources if necessary. The employee will be informed of the standards of performance expected and improvements to be made. This does not form part of the disciplinary procedure.

Examples of misconduct 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 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. The letter may also invite them to an 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. Where appropriate, the letter will also include: a summary of relevant information gathered during the investigation; a copy of any relevant documents which will be used at the disciplinary hearing and a copy of any relevant witness statement,

except where a witness's identity is to be kept confidential, in which case we will give you as much information as possible whilst maintaining confidentiality. 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*

The hearing will typically be Chaired as outlined in appendix 3, however there may be occasions where this is not appropriate and the staff member will be advised accordingly. The Investigating Officer and/ or a member of Human Resources may also be present.

At the hearing the appropriate manager will outline the details of the alleged misconduct 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. Where an employee is persistently unable or unwilling to attend a disciplinary hearing without good cause, the Commission may 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.

We may adjourn the disciplinary hearing if we need to carry out any further investigations such as re-interviewing witnesses in the light of any new points you have raised at the hearing. You will be given a reasonable opportunity to consider any new information obtained before the hearing is reconvened.

e) *Decision and action*

Following the hearing, the appropriate manager will decide whether disciplinary action is justified or not. Where it is decided that no action is justified the employee may 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 appropriate 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. The employee will usually be informed of the decision in writing within five working days of the hearing.

3.2.1 First Formal Action

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

First formal action – misconduct

Where, following a disciplinary hearing, an employee is found guilty of misconduct; the first step will usually 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 their 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.

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 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, the final stage in the disciplinary process might be dismissal.

In cases of 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 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.

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 employee's 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 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 follow 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 in line with the alcohol and substance abuse policy
- 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

| Role | First Warning | Appeal | Final Written Warning | Appeal | Dismissal | Appeal |
|--|-------------------------|------------------------|------------------------------|------------------------|--------------------|-------------------|
| Chief Executive | Chair | Panel of Board Members | Chair | Panel of Board Members | Chair | Independent Panel |
| Head of Corporate Services/ Executive Directors/Communications Manager/Business Change and Improvement Manager | Chief Executive | Board Member | Chief Executive | Chair | Chief Executive | Chair |
| Positions that report to Executive Directors | Executive Director | Chief Executive | Executive Director | Chief Executive | Chief Executive | Chair |
| Practitioners | Senior Manager | Executive Director | Senior Manager | Executive Director | Executive Director | Chief Executive |
| Reporting to HOCS | HOCS | Chief Executive | HOCS | Chief Executive | Chief Executive | Chair |
| Reporting to Head of Projects (Death in Detentions) | Head of Projects | Executive Director | Head of Projects | Executive Director | Executive Director | Chief Executive |
| Reporting to Head of Investigations | Head of Investigations | Executive Director | Head of Investigations | Executive Director | Executive Director | Chief Executive |
| Reporting to Project Manager | Project Manager | HOCS | Project 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 | Casework Manager | HOCS | Casework Manager | HOCS | HOCS | Chief Executive |

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|--|---------------------------|-----------------|---------------------------|------|-------------------|-----------------|
| Manager | | | | | | |
| Reporting to Communications Manager | Communications Manager | HOCS | Communications Manager | HOCS | HOCS | Chief Executive |
| Reporting to Office Manager | Office Manager | Finance Manager | Office Manager | HOCS | Office Manager | HOCS |