

Disciplinary policy and procedure

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1. Aim and purpose

- 1.1. This policy and procedure is designed to help employees to achieve and maintain standards of conduct, attendance and job performance. It applies to all our employees and should be followed in cases of misconduct or where an individual's performance has failed to improve to the required standard under the performance improvement policy and procedure. This policy does not form part of an employee's contract and we reserve the right to amend this policy and procedure from time to time.
- 1.2. Outlined below are guidelines for the use of the informal and formal procedures which should be followed when an employee's conduct or performance falls short of our expectations. It is important that concerns are addressed promptly, with the aim of resolving problems and improving conduct and performance where possible. However, if these steps prove unsuccessful and the employee's conduct or performance fails to meet the required standards employment may be ultimately be terminated.
- 1.3. We aim to ensure consistent and fair treatment for all employees and are committed to complying with relevant legislation.

2. General principles

- 2.1. We realise that each individual case will vary depending on the specific circumstances.
- 2.2. We will treat all disciplinary cases sensitively and with due regard to everyone involved.
- 2.3. We will ensure the employee is fully aware of the allegation.
- 2.4. We will move through disciplinary processes in a timely fashion.
- 2.5. All individuals' concerned (managers, employees and any companions) should make every effort to attend any meetings. Where time limits are referred to in the course of this procedure they may be varied by agreement between the employee and us.
- 2.6. We will ensure there will be appropriate investigation before a disciplinary hearing.
- 2.7. In some cases third parties may be involved and we will treat these people sensitively.
- 2.8. We will ensure there will be a disciplinary hearing before a sanction is applied.
- 2.9. While persistent misconduct may lead to eventual dismissal, in general no employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty will be dismissal without notice or payment in lieu of notice.
- 2.10. An employee will have the right to appeal against any disciplinary action.

3. Definitions

- 3.1. Matters which we consider to amount to a disciplinary offence may be misconduct or gross misconduct. Examples include but are not limited to:
- 3.2. Misconduct
 - significant and/or persistent underperformance;
 - persistent bad timekeeping;
 - unauthorised absence;
 - minor damage to our property;
 - failure to observe procedures;
 - abusive behaviour;
 - bringing the business into disrepute;
 - failing to disclose pending criminal charges or convictions (not covered by the Rehabilitation of Offenders Act);
 - behaviour which contravenes the values of the business;
 - unreasonable refusal to follow an instruction issued by a manager or supervisor and;
 - poor attendance (this list is not exhaustive).
 - Minor breaches of the Code of Business Ethics
- 3.3. Gross Misconduct
 - theft, fraud or offences under the Bribery Act (bribing another person, being bribed, bribing a foreign public official or failing to prevent bribery);
 - disclosure of company documents, and other confidential information to unauthorised third parties;
 - unlawful discrimination or harassment;
 - the use or distribution of illegal drugs while on the company's premises;
 - indecency;
 - bringing the business' reputation into serious disrepute;

- intentional and reckless disregard for safety and safety rules;
- provoking or participating in any form of violence at work;
- threatening, abusive or offensive language to colleagues, customers or suppliers;
- persistent refusal to carry out a reasonable instruction;
- gross insubordination or wilful misconduct;
- behaviour which seriously contravenes the values of the business;
- falsification of information or documents;
- failing to disclose serious pending criminal charges or convictions (not covered by the Rehabilitation of Offenders Act) and;
- deliberate damage to our property
- Serious breaches of the Code of Business Ethics

3.4. Companion is a fellow employee or a Trade Union representative

The Procedure

4. Preliminary Investigation

- 4.1. The purpose of a preliminary investigation is to ascertain whether or not an employee's conduct appears to constitute a potential breach of the disciplinary rules or code of business ethics. It is not always necessary to carry out a preliminary interview, but where it is considered appropriate to do so, the employee will be informed as soon as possible. We expect that the investigation will be completed as soon as is reasonably possible considering the complexity of the case, and that it will be undertaken objectively, fairly and consistently.
- 4.2. Where a preliminary investigation is considered appropriate, it will normally be conducted by a member of HR, a Manager, or occasionally another nominated person as under the provisions of other relevant policies/procedures (e.g. Fraud policy Public Disclosure Policy, etc). However, in cases of performance concerns the line manager will conduct the investigation.
- 4.3. Preliminary investigation may require a meeting with the employee in which case the employee will be invited to attend an investigatory interview. The employee will be informed at the outset that the interview is an investigatory interview.
- 4.4. In serious cases of alleged misconduct or where it is considered appropriate for the employee not to attend work while a preliminary interview is being conducted it may be appropriate to suspend the employee in accordance with the provisions of the Suspension Policy.

5. Outcomes of the preliminary investigation

- 5.1. There are a number of potential outcomes from a preliminary investigation these are:
- The investigation may determine that there no breach of the disciplinary rules /code of business ethics has taken place and therefore no further action under the disciplinary procedure is warranted.
 - The investigation may determine that a minor breach of the disciplinary rules/Code of Business ethics did occur, but there is insufficient evidence to warrant initiating formal disciplinary action. However, informal action might be appropriate.
 - The investigation may determine that a significant breach of the disciplinary rules/ code of business ethics appears to have taken place and the matter should be considered under the formal disciplinary procedure.

6. Informal action – general

- 6.1. It is hoped that more minor disciplinary issues can be resolved informally. Informal action should be used where possible to address minor breaches of discipline, or to initially address performance issues.
- 6.2. In the instance of underperformance it is important to ensure that the performance improvement policy and procedure has been followed prior to use of the disciplinary policy and procedure. The performance improvement policy and procedure constitutes the 'informal' stage of this disciplinary policy and procedure and therefore should an individual's performance fail to improve to the required standard, the next step will be formal action as outlined in this disciplinary policy and procedure. It may also be appropriate to refer to the information contained in the policy on managing sickness absence.

7. Informal action - conduct

- 7.1. Where the issue is one of conduct, an informal discussion between the line manager and employee will be arranged as soon as possible to discuss the issue and to agree steps for improvement including a timescale, where relevant. Notes may be taken. In certain circumstances it may be appropriate to involve a mediator at this stage to seek an informal resolution to the issue.
- 7.2. Repetition of similar conduct might result in formal disciplinary action being taken.

8. Informal action - performance

- 8.1. Where the issue is underperformance the performance improvement policy and procedure should be followed. Formal disciplinary action will normally be undertaken where counselling of the employee, further training (if appropriate) and informal discussions have failed to improve performance to the required standard. Please refer to the performance improvement policy and procedure for further information.
- 8.2. If the employee's conduct or performance improves to a satisfactory standard over the agreed timescale, then the performance improvement policy and procedure concludes at this point in the process. If however, conduct/performance does not meet the expected requirements within the agreed timescales the steps detailed under Formal action should be followed.

9. Formal action

- 9.1. Formal action can take place without informal action first being taken and therefore in some cases disciplinary action may commence at this stage. Formal action may be deemed appropriate where:
 - The informal steps have not achieved the required improvement to conduct/ performance;
 - Where, upon completion of an investigation, there are reasonable grounds to believe that an employee has committed an act of misconduct and it is not appropriate to address this using the informal measures
 - In dealing with acts of gross misconduct whereby the employee's conduct is sufficiently serious to warrant bypassing an informal stage.
- 9.2. If following the investigation it is felt that there is a disciplinary case to answer, or in the case of serious misconduct, the employee will be informed of this in writing. The letter will invite the employee to a formal disciplinary hearing to discuss the case and will:
 - give the employee a minimum of two working days' advance notice of the hearing;
 - tell the employee the purpose of the hearing and that it will be held under our disciplinary procedure;
 - explain the employee's right to be accompanied at the hearing by a companion who can be a fellow worker or accredited trade union representative;
 - give the employee written details of the nature of his/her alleged misconduct or underperformance; and

- provide to the employee all relevant information and documents (e.g. statements taken from any fellow employees, the employees' performance improvement plan, policy documents etc) not less than two working days in advance of the hearing.
- to give the employee an indication as to the severity of the disciplinary warning which might be issued.

9.3. The employee must advise the manager prior to the meeting if they intend to be accompanied. The companion will be allowed to address the hearing and confer with the employee but they will not be allowed to answer questions on the employee's behalf.

9.4. If the employee is unable to attend a disciplinary hearing and provides good reason, the hearing will be moved to another day, again giving at least 2 days notice of the new hearing date. If the employee is unable to attend the rearranged hearing it will usually continue to take place in the employee's absence, unless there are special circumstances accepted by the disciplinary panel. In this case the employee may make written submissions or the companion may attend and present the employee's case. If the employee's companion is unavailable on the day scheduled for the meeting, the employee can propose an alternative time suitable to the panel within five working days of the scheduled date.

10. The disciplinary hearing

10.1. A disciplinary hearing will normally be conducted by a panel which includes the employee's line manager together with a HR representative. A manager responsible for the investigation of the disciplinary offence(s) will not usually be on the hearing panel (unless the hearing is due to underperformance), but may present supporting facts and material to the disciplinary hearing. The employee is entitled to give a full explanation of the case against them and to answer any allegations. The employee will be given opportunity to ask questions, present evidence and call relevant witnesses as well as to raise points about any information provided by witnesses. Should either party intend to call relevant witnesses they should advise the other party of this prior to the commencement of the hearing.

10.2. If the disciplinary hearing is adjourned by the panel (e.g. for the purpose of gathering further information) the employee will be informed of the adjournment period. If further information is gathered, the employee will be allowed a reasonable period of time, together with their fellow worker or trade union representative, to consider the new information prior to the reconvening of the disciplinary proceedings.

10.3. At the conclusion of the disciplinary hearing the panel will consider the evidence put forward. The employee will be told the panel's decision and resulting disciplinary action (if any) as soon as possible after the conclusion of the disciplinary hearing. The decision will normally be confirmed in writing within 5 working days. The employee will be notified of their right of appeal under this procedure.

11. Deciding on appropriate disciplinary action

11.1. If following a disciplinary hearing the panel establishes that the employee has committed a disciplinary offence, disciplinary action will be taken. In any instance (including the first) we may issue a first written warning, final written warning or dismissal if the misconduct or performance failing is serious enough. Appropriate action will depend on the seriousness of the case in question.

11.2. Minor misconduct or underperformance will result in a first written warning which will be retained on the employees file for a specified period. The written warning will include:

- the precise nature of the issue;
- the level of improvement required;
- any support/training that the employee will receive to assist in improvement;

- the time limit for achieving that improvement;
- review periods during the currency of the warning;
- the consequences of failure to achieve or maintain the improvement;
- when the warning will expire which will be a timeframe determined by the panel;
- the right to appeal

11.3. Further recurrence of misconduct or no/insufficient performance improvement will warrant an additional disciplinary hearing. This will be conducted by the line manager or another nominated person and a member of the HR department will provide support and advice. The outcome of this may be a final (or combined first and final) written warning. This will follow the same format as outlined for the first written warning but will include that further misconduct or underperformance is likely to result in dismissal. The expiry date for a final warning will be determined by the panel but will normally be for a period of 12 months.

11.4. Should the employee's misconduct/underperformance continue following a final written warning the employee may be dismissed with notice or with pay in lieu of notice, depending on the sensitivity of the issue or good business practice.

11.5. Gross misconduct will usually result in summary dismissal (i.e. without notice or payment in lieu of notice). The panel may decide after considering the relevant circumstances that a lesser penalty may be appropriate and a final (or combined first and final) written warning may instead be given.

11.6. Where a final written warning is given to an employee, we may also impose:

- demotion;
- in line with any provision in the contract of employment, transfer to an alternative suitable job (which may be of a lower level).

11.7. If the misconduct or underperformance is not serious enough to warrant a formal warning, then monitoring should be continued subject to a clear indication to the employee as to where formal proceedings could be introduced if the misconduct or underperformance continues.

11.8. Formal warnings will cease to be live after the time period specified (para 11.2)

12. Authority to dismiss

12.1. The authority to dismiss is held by Chief Executive, Directors, Deputy Ranger and Head of HR.

13. Appeal

13.1. An employee may appeal any formal disciplinary decision. The appeal should be submitted in writing to the manager or nominated person as outlined by previous correspondence within 5 working days of receipt of the decision. When lodging an appeal, the employee should state:

- the grounds of appeal; and
- whether he/she is appealing against the finding of misconduct/underperformance, or against the level of disciplinary action imposed.

13.2. The appeal will be heard by a manager who is at the same job level or higher than the manager who issued the original warning. Where this is the Chief Executive, the Deputy Ranger or a Director, they may nominate a deputy. The appeal panel will review the decision and any subsequent facts that have come to light, and decide whether to uphold the disciplinary decision. Appeal hearings will normally take place within 10 working days or as soon as reasonably practicable after receipt of the employee's written notice of appeal. Upon completion of the appeal hearing, the appeal panel will convey the decision to the employee. The decision will normally be

confirmed in writing within 5 working days and where the decision is different to the original outcome, reasons for the difference will be specified in the letter. We reserve the right to prolong the issuing of a decision for the purpose of further investigations and should unforeseen circumstances arise. In the event that the appeal panel does not accept the representations made by or on behalf of the employee, the disciplinary decision will be upheld. The appeal panel's decision is final.

- 13.3. Where the action taken is dismissal, the appeal procedure should normally be carried out during the period of notice. (If termination is summary this should be within 20 days of the date of termination, or as soon as reasonably practicable). If the panel's decision was summary dismissal without notice, we will be under no obligation to reinstate or pay the employee for any period between the date of the original dismissal and the appeal decision. In the event that the panel's decision to dismiss is overturned, the employee will be reinstated immediately and paid for any period between the date of the original dismissal and the successful appeal decision. Continuous service will not be affected.

14. Mediation

- 14.1. There are some circumstances where it is helpful to discuss the issue with a mediator. We will offer mediation if appropriate and only if both parties are willing to try this route.

15. Criminal offences committed outside of working hours

- 15.1. A charge or conviction for any offence may result in disciplinary proceedings being taken against the employee where, in the opinion of We, the charge or conviction is such as to affect, or be likely to affect, the suitability of the employee for the position in which he/she is employed, or the business or reputation of We, or where the existence of the charge or conviction could, in the opinion of We, otherwise seriously undermine the trust and confidence in the employee.

16. Training

- 16.1. We are committed to providing appropriate training and development to managers who are required to operate this procedure.

17. The role of the HR department

- 17.1. The role of the HR department is to ensure the effective interpretation and application of the disciplinary procedure and to ensure consistent and fair practice across We. Appropriate guidance and support will be provided by the HR department, who should be consulted at the earliest possible stage. Line managers are responsible for the effective operation of the disciplinary procedure.

18. General

18.1. This policy supersedes any arrangements previously set out in the Staff Handbook and Working for The Crown Estate - A guide for employees.

If you have any queries regarding the application of this policy, please speak to your line manager or a member of the HR team.

Date last reviewed: April 2013

Agreed with: GMB and PCS

This policy will be reviewed every 2 years, or earlier if legislation or practice changes.