

Consultation Log – Disciplinary Policy – February 2019

Who	Comments/Feedback	Changes made as a result/action
EMT 06/11/18 Version 1	Appendix E – agreed to follow the Counter Fraud framework and remove reference to notifying a named individual of any financial improprieties.	Actioned.
	A change to the named individual under the ICT Security Policy once SSC digital programme in place.	Actioned – future proofed to read – appropriate Head or Director.
	Include the work “parameters” under the scope of the investigation.	Actioned in appendix B.
Resources Committee 05/12/18 Version 2	Various – minor grammatical comments.	Actioned.
	Section 1 – Purpose Include "to support our strategic objectives" in the first para.	Not actioned – this is included in the third para therefore would be repetitive
	Section 4 - No formal investigation will take place into alleged misconduct without full discussion with Human Resources – does HR routinely direct IOs to Disciplinary Procedure. Reasonable timescales – can we insert guidance on actual timescales here or in an Appendix?	Actioned – yes, we consistently refer to it throughout the process and direct the IO and DO to the relevant parts/salient points. Wording has been added to confirm this “and reference to this Disciplinary Procedure”. Not actioned – if we set timescales and then for whatever reason we cannot comply then we will be in breach of our own procedure which could potentially mean any case not being upheld. ACAS no longer specify timescales and they too refer to reasonable/without unreasonable delay.

	<p>Section 5 – suspension can only take place after discussion with HR. Will HR always be available?</p> <p>Don't like the wording re "HR has no influence over the final decision and outcome, that is the responsibility of the Disciplining Officer/Employment Appeals Sub Committee.</p>	<p>Actioned – amended to "Advice should be obtained from HR before suspending an employee". HR advice can ensure that the organisation are taking a consistent approach and can support the process in terms of the letter; what the manager should tell the employee and other staff etc.</p> <p>Actioned – There is case law where dismissals have been unfair due to HR influencing the decision/sanction applied. HR officers must not exceed their role in providing procedural advice and guidance to managers involved in disciplinary matters.</p> <p>Amended to read "It is not the function of HR to make or unduly influence the final decision and outcome, which is the responsibility of the Disciplining Officer/Employment Appeals Sub Committee".</p>
	<p>Section 7 <i>The Investigating Officer will normally be the employee's line manager, and the Disciplining Officer will be the next senior manager. – reconsider.</i></p> <p>Bringing in an external consultant – no we shouldn't do this.</p>	<p>Actioned - Line deleted and replaced with "The Officers should not have been directly or indirectly involved in the case, that is, they should not have been a witness to the alleged misconduct".</p> <p>Not actioned – this was a recommendation in the lessons learned from a previous case – the policy should make reference to the potential need to use an external resource depending on the specifics of the case. This is permissible under the ACAS guidance;</p>

		<p>the SSSC however remains responsible for the behaviour and conduct of any external panel member or consultant.</p> <p>There are occasions when internal resources are either not available or are inappropriate – if we don't have room in the procedure to go for external members we are left having to go beyond the process and into territory where a failure to agree an approach can/might lead to difficulty. It is better to provide for this rather than seek agreement on individual cases.</p>
	<p>Section 10.3 Could be first disposal instead of after first written?</p>	<p>Not actioned – consistent language with ACAS guidance; Care Inspectorate policy; the previous SSSC policy and benchmarking/best practice.</p>
	<p>Section 12 Add in “The appeal is not upheld and the disciplinary sanction is increased” – can you do this?</p>	<p>Actioned – yes but only if there is an express right to do so in the contract of employment or disciplinary procedure – therefore by including it here it is an option for the Chair.</p>
	<p>Appendix A – Roles and Responsibilities Various concerns that we should not define who can dismiss.</p>	<p>Partially actioned - Within the letter of invite to a Disciplinary Hearing we need to state the allegations and the likely range of potential consequences if the allegations are upheld e.g. These are serious allegations which fall under the scope of gross misconduct. You should be aware that if they are substantiated, following consideration of a full hearing, this may result in your employment being terminated. Therefore, it is possible to define who can chair the meeting at the invite stage.</p>

		<p>Clarified in section 7 and section 10.</p> <p>Appendix A has been removed as all detailed within the policy.</p> <p>The point about it being an EMT member is that this is serious and you need a proper level of consideration and consistency. There isn't an assumption that any case which might be gross misconduct will lead to dismissal just that it might and it needs to be considered by an appropriate senior level in the organisation.</p>
	<p>Appendix C – Guidance on Conducting A Formal Disciplinary Hearing</p> <p><i>In the hearing – the representative cannot answer questions on an employee's behalf – is this the employees witness?</i></p> <p><i>The Investigating Officer is not present at this stage – both parties must be in the room or never in the room.</i></p> <p><i>Final presentation of cases – amend to Summing Up. Employee to present their case first; then IO – can this be other way around.</i></p> <p><i>Adjourning the Hearing to consider evidence – bullets 3 – 4 questioned – are they correct?</i></p>	<p>Not actioned – no this is the employee's representative i.e. who accompanies them to the meeting.</p> <p>Actioned – there is the option to speak with the employee to set the scene before the IO enters. However, to be open and transparent all parties, except witnesses will be in the room, for the introduction and the allegations.</p> <p>Actioned – agreed as this is the IO case against the employee so makes sense.</p> <p>Actioned – ACAS state that the outcome should be communicated to the employee in writing without</p>

		unreasonable delay. This gives the option to give the outcome on the day or in writing.
	Appendix D <i>Minutes of the meeting are not taken, a brief summary...</i> - amend as need evidence for ET.	Actioned – now reads “A note of the meeting will be produced and shared with all parties”. The note of the meeting would be provided under a subject access request therefore we will offer this upfront to be open and transparent.
	Appendix E – Criminal charges Include regulatory body.	Actioned.
OMT 24/01/19 Version 2	OMT feedback after two members attended an ACAS course: <ul style="list-style-type: none"> - Line manager not being the investigating officer where possible - HR and notetaker don't ask questions. 	<p>Actioned – amended to “An Investigating Officer will be appointed (supported by Human Resources) and a Disciplining Officer identified to chair a disciplinary hearing if required. The Officers should not have been directly or indirectly involved in the case, that is, they should not have been a witness to the alleged misconduct”.</p> <p>Not actioned – the role of HR is defined in section 5. There is case law where dismissals have been unfair due to HR influencing. HR officers must not exceed their role in providing procedural advice and guidance to managers involved in disciplinary matters. Similarly, managers must accept the responsibility to make the investigatory findings and disciplinary decisions without their judgement being improperly influenced. The trick therefore is to make sure that the role of HR is clearly defined. If an HR professional conducts the investigation, for example, they should not then go on</p>

		<p>to advise the manager on the disciplinary hearing or appeal. The procedure should be fair and transparent and the employee must be given the opportunity to put their case to the true decision-maker.</p> <p>HR can ask questions as long as they are not leading, for example, they can ask for clarity.</p>
	Section 1 <ul style="list-style-type: none"> - in para 3 after strategic plan insert statutory objectives - Move 3rd para to 1st. - 	<p>Actioned</p> <p>Ties in with feedback from Resources Committee</p>
	Section 5 <ul style="list-style-type: none"> - After the sentence ending “after discussion with HR” include the words to the effect any line manager can immediately suspend in certain circumstances, see page X. 	<p>Not actioned – feedback from Partnership Forum meant this section was removed.</p>
	Section 12 Remove bullet “inconsistency of the penalty” – deletion doesn’t necessarily prevent an appeal it just limits any purely arbitrary appeal on the basis of someone feeling someone else got off lighter when they would have limited information about the person’s disciplinary case.	<p>Actioned.</p>
	Appendix A – Responsibility Levels of Disciplinary. Little appetite to allow OMT members to make dismissal decisions in an organisation as small as ours with few disciplinary matters – alternative could be that OMT could conclude that all facts mean dismissal but then this needs ratified by a member of EMT.	<p>Actioned – Appendix A has been removed given feedback from Resources Committee. Only an EMT member can dismiss.</p>
	Appendix B – Carrying out an Investigation - include in the investigation “this may include any exculpatory evidence”.	<p>Actioned – line added – “An investigation should include evidence which is exculpatory; this means evidence favourable to the employee in determining</p>

		that the allegation(s) are not substantiated”.
	Title – Disciplinary Procedure - From reading the further inclusions it comes back to me of regulating the staff opposed to managing the staff.	Actioned - In line with ACAS terminology we will refer to this as a Disciplinary Procedure. All references throughout have been updated to read “procedure”.
Partnership Forum 12/12/18 & 22/01/19 Feedback received on 10/01/19 Version 2	Section 1 – Purpose <i>Any minor misconduct will be dealt with informally. Where matters have not been resolved informally or when allegations have been received that requires investigation employees will be managed through the Disciplinary Procedure. – this is stated on p6 under proportionate.</i> Why has the following para been added and should it sit here? - <i>The Disciplinary Procedure is designed to help all employees to achieve and maintain standards of conduct and to encourage and support relevant employees to improve as appropriate. Excellent conduct and high standards of behaviour are essential to ensure we have a confident and competent workforce that are equipped to help us to achieve the strategic objectives set out in our Strategic Plan.</i> Misconduct – this para has been added in from last section should this be here or further into the policy?	Not actioned – the purpose of this point is that we tell people at the very beginning when this procedure will or won’t be used therefore it can be in both sections. This is in line with ACAS guidance which states - <i>Cases of minor misconduct or unsatisfactory performance are usually best dealt with informally.</i> No action – All of our policies and procedures are designed to support employees; this para just explains this. Disciplinary rules and procedures are designed to assist in the standard setting for conduct and behaviour. It is important that managers and employees understand them. The disciplinary process is not intended to be punitive in nature. No action – it is here at the start to make it clear that this procedure is for misconduct and that capability should be dealt with via a separate process. Employers can choose to deal with both misconduct and poor performance under a disciplinary procedure however the SSSC have chosen to have separate procedures. Before embarking on formal action, the employer must establish whether the employee is

		falling short of the standards because of their capability or conduct. Put simply, Capability is CAN'T and conduct is WON'T. For this reason, it is advisable to always have a separate disciplinary procedure and a capability procedure. This was also a recommendation from a lessons learned review of previous disciplinary cases – conduct and capability should be addressed separately.
	Section 4 – Guiding Principles <i>Employees have the right to be accompanied at formal stages of the disciplinary process by a work colleague or a Trade Union representative - Totally disagree. Where a member is being spoken to informally TU attendance should be provided.</i>	Actioned – Employees do not have the statutory right to be accompanied at disciplinary investigation meetings. Under s.13(4) of the Employment Relations Act 1999, the right to be accompanied applies to only those disciplinary hearings that could result in: the administration of a formal warning; the taking of some other action (for example dismissal or other disciplinary sanctions); or the confirmation of a warning or other action already issued or taken (i.e. an appeal hearing). However, in the spirit of partnership working this has been amended to make the right to be accompanied at any stage of the disciplinary procedure.
	Section 5 <i>It is the responsibility of all employees to challenge unacceptable behaviour through direct communication or to raise it with a line manager. – this has been added in.</i>	No action – this is to reinforce the culture of direct communication and is in line with the Dignity at Work Policy.
	Section 6 – Informal Action Will this be recorded on their personnel file as it is only informal? Will this letter be held on file? Will the letter be time limited on their file e.g. 3 months?	No action – Any information related to the Disciplinary Procedure is held separately to an employees personnel file. In line with ACAS a note of any informal action should be kept for reference purposes.

	<p><i>The employee will also be advised in writing of the conduct and/or performance expected of them in the future and of the possible consequences should the misconduct be repeated. This will be in line with what was agreed and discussed in the meeting. - On both sides e.g. the SSSC will follow through on what they have identified as support to the individual.</i></p>	<p>Letters are not time limited as there is no sanction timescale applied unlike formal warning where there is a 'live' period, although these records are still held after they have expired. All formal disciplinary records are retained for a period of 6 years after the employment has ceased in line with GDPR and the fact that an employee can claim breach of contract within that period. All personnel files and training records are also retained for 6 years after employment ceases.</p> <p>Actioned – line added.</p>
	<p>Section 7 <i>The employee can bring a work colleague or Trade Union representative with them to the investigation meeting. However, the meetings will not be unreasonably delayed to accommodate this, i.e. more than one reorganising of a date. - Ample notice will need to be given to the TU side to ensure representation can be provided as per PF agreement.</i> <i>Senior Management – last para.</i> <i>Seems to be in wrong place.</i></p>	<p>Noted – ACAS state that reasonable notice be given to all parties; reasonable however is no longer defined. We will always strive to give as much notice as reasonably possible for all parties.</p> <p>Actioned – agreed and moved to 2nd para of section 7.</p>
	<p>Section 8.1 Immediate Suspension following serious misconduct As stated in section 5 a member of the Executive or OMT may suspend</p>	<p>Actioned – this was within the previous procedure however on reflection there is no need to have a</p>

	<p>a member of staff – this is now any line manager? Would they not need to discuss first with HR?</p>	<p>separate process as situations such as these e.g. employee is in personal danger or is creating a danger to others can be covered by the point in section 8 “employee remains at work it could worsen the situation”. This also means that only a member of the EMT or OMT could suspend in discussion with HR.</p>
	<p>Section 9 <i>Employees will be given at least 7 calendar days written notice of a hearing date</i> - This would not be enough time – as staffside have to provide evidence and witnesses and submit this 5 calendar prior to a hearing – leaving only two days to arrange this. More noticed required.</p> <p><i>At the disciplinary hearing both management and employee will have the right to call witnesses.</i> - And witnesses will be at no financial detriment for attending the hearing.</p>	<p>Actioned – this has been increased to 14 calendar days notice and is in line with the Care Inspectorate’s policy. We have also added in the line “Unless otherwise agreed.” As there may be situations where it is in the employee’s interest or more practical/reasonable to hold it sooner.</p> <p>Actioned – added to section 5 under witness responsibilities.</p>
	<p>Section 10.4 <i>Further misconduct of a similar or different nature may result in dismissal if a written warning (first or final) is still live on the employee’s file</i> - The disciplinary procedure would need to be followed to make this decision.</p>	<p>Actioned – sentence added for clarification purposes.</p>
	<p>Section 10.5 <i>Certain offences will be regarded as gross misconduct (see Appendix F for definitions) which will normally warrant dismissal without notice (or payment in lieu of notice) or pay in lieu of holidays, despite the absence of previous warnings. The employee will be entitled to pay in lieu of statutory holiday entitlement accrued under The Working Time Regulations 1998.</i> - See appendix F for examples of Gross Misconduct.</p>	<p>Actioned – reference to Appendix included.</p> <p>If there has been gross misconduct, a summary dismissal will be justified: that is, the employee can be dismissed without receiving any earlier notice or warning. However, the dismissal must still be</p>

	Is this correct re absence of previous warnings?	procedurally fair (see below for the general rules of procedural fairness).
	Section 10.6 <i>incremental pay increase and/ or annual leave increase withheld</i> – this has been added in.	No action – this is in line with the contract of employment which states “Incremental progression to the top of the pay band will be subject to satisfactory work performance as determined by the Performance Development Review System” – it is just another example of other sanctions, this list is not exhaustive.
	Section 11 In the last policy it had ‘Note of Improvement’ it has been removed from this revision why?	Actioned – when this was consulted in 2016 there seems to have been agreement reached to remove this (trail does not show rationale). However, happy to re-include but simplify to be a Formal Verbal Warning for 6 months (no need for a separate form) and in line with the Care Inspectorate policy.
	Section 12 <i>new evidence has become available</i> - In the previous version had-‘ the findings of the hearing on a point of fact which is pertinent to the decision of the hearing’ is this the same as new evidence has become available?	No action – yes, just simplified.
	Appendix C – Conducting a formal disciplinary hearing <i>Written confirmation of the decision will be given to the employee as soon as possible after the hearing but no later than 14 calendar days from the date of the hearing</i> – should this be a shorter time?	No action – outcome letters are normally very detailed – this timescale gives us time to produce the letter, get feedback from other panel members and to consider the draft letter along with the note of the meeting which again takes time to produce. We will always endeavour to get the letter out as soon as possible.

	Appendix F – Examples of Misconduct and Gross Misconduct Examples of gross misconduct – some of these have been added; are some not misconduct rather than gross misconduct	No action – the SSSC regards these as examples of gross misconduct i.e. behaviour, on the part of an employee, which is so bad that it destroys the employer/employee relationship.
	Various – point raised that paragraphs or sentences have been added in since previous version circulated for consultation. No specific comments were made.	No action – any points added were for clarification purposes or to enhance what was already there.
Anderson Strathern (Employment Lawyers) V3 – taken into account all feedback received to date 06/02/18	Section 4 – Fairness (2nd bullet) There may be admittedly rare occasions when the employee is happy to accept a formal warning and to do so without having to go through a full formal investigation and disciplinary process, Section 4 – Consistency (3rd bullet) There may be exceptional circumstances where it is necessary to bring about a suspension and it has not been possible to contact a full time officer e.g. a fight or mental breakdown, Section 4 – Reasonable Timescales (last bullet) “negotiation” suggests more process and formality of agreement.	No action – regardless the SSSC stance should be that we will always investigate before taken action. In this situation it may mean that the investigation is short and the parameters narrow. Actioned – “Other than in exceptional circumstances” has been added in. Actioned – amended to “discussed”.
	Section 5 – Witness Responsibilities There is more to it than confidentiality – it also includes potential for collusion or influencing other colleagues,	Actioned – confidentiality removed.
	Section 10.7 –Other or additional sanctions We may want the ability to add other sanctions to any level of warning.	Actioned – amended from “any final written warning” can be supplemented by... to “any warning”.

Resources Committee 20/02/19 V2 – taken into account PForum and OMT feedback	<p>The policy should remain a “policy” and not simply a “procedure”. It should be titled “Policy and Procedure”.</p> <p>The SSSC’s “note” of a disciplinary hearing would be shared with the parties involved.</p> <p>That it would always be a member of OMT or EMT who would chair a disciplinary hearing.</p>	All suggestions amended.
OMT 29/09/2020	4.1 Would not want coaching to be viewed or used as a sanction by managers or staff.	Not actioned. Not the intention and this is the informal stage – common in most policies.
	A note of the disciplinary hearing will be shared with all parties involved I see this is highlighted. I’m not sure about the wording – taken as read, it could mean the witnesses. Should we just say it will be shared with relevant people. Gives us a bit of wiggle room.	Actioned.
	<p>This pre-supposes the outcome. It was raised by the previous resources committee. I’m not sure this needs to be set out in here – the scheme of delegation seems a more appropriate place. If we are sure it should be in here and the intention is that OMT will be able to hear disciplinaries then this needs to be changed – this will require input from partnership forum.</p> <p>If this remains then OMT should not be hearing disciplinaries.</p> <p>There was not a firm decision on this from the Resources committee previously although the position before iirc was that we didn’t have an appetite to be raising with the unions and trying to change.</p>	<p>Actioned so that OMT can hear dismissals.</p> <p>Note – overturned by PF and EMT.</p>

	Do we not need to make people aware of their right to appeal to the ET?	Not actioned – this is internal process – if they want to do that they need to do that completely independently from us.
Partnership Forum 05/10/2020	Re the draft Disciplinary policy, we just have a couple of queries on the last page. The wording could be left open to interpretation so more defined examples or a reference to the Code of Conduct might be helpful.	Added in - that is contradictory to the Code of Conduct or the SSSC Codes of Practice
	Only EMT should be able to dismiss.	Actioned.
EMT 15/10/2020	Misconduct page 4 – amend language from “one’s superior”.	Amended to - an act of wilfully disobeying reasonable management instructions.
	P 14 - Does it exclude flexi time?	Clarified - exclusion from the flexible working hours scheme (flexi time).
	4.6 appeal – who should it be lodged with?	Amended to - Should an employee wish to appeal against a formal disciplinary warning they must do so, in writing to the Director of Finance and Resources.
	Does Employment Appeals Sub Committee still exist?	Yes, in the governance review there was a recommendation to review this however the TUs did not want this and therefore decision reached that it would continue. It is referred to in the governance documents.
	P10 – discussion again around whether or not OMT can dismiss. TU specifically said: <i>Our position is that EMT should continue to have the sole responsibility with regards to dismissing an employee. As you say, dismissal is rare but such an outcome is reflective of very serious</i>	Amended to - If the allegations are serious and potentially fall under the scope of gross misconduct and subsequently could result in dismissal the Disciplining Officer will need to be a member of the

	<i>conduct concerns. Therefore, this seriousness should be reflected in the level of authority exercised in taking the decision to dismiss an employee. In addition, although EMT may be aware of a process involving an OMT member reaching a dismissal decision, it is unlikely that EMT will have a full insight and comprehensive overview as to the individual aspects of each case.</i>	<p>Executive Management Team.</p> <p>Dismissals are so infrequent that EMT agreed to keep it as just EMT who can dismiss.</p>
Council November 2020		