



# Disciplinary Procedure

## 1 PURPOSE AND SCOPE

The purpose of Healthwatch Hackney's Disciplinary Procedure is to help and encourage all employees achieve and maintain required standards of conduct, job performance and good discipline. This procedure applies to all staff except for those in their probationary period.

It aims to enable the individual whose performance and/or conduct has failed to reach the required standard, to make the necessary improvement through guided instruction. The aim is also to ensure that the Healthwatch Hackney's interests are safe-guarded while staff are treated fairly and equitably, with an emphasis on correction rather than punishment.

The purpose of this procedure is to clarify the rights and responsibilities of management and employees in respect of disciplinary action. Its objective is to provide a fair and consistent means by which disciplinary rules are observed and standards of work performance and conduct are maintained. It provides a method for dealing with alleged breaches of organisational policies, rules and procedures; cases of alleged misconduct; or persistent poor performance. It ensures that disciplinary action, if taken, is appropriate to the circumstances.

## 2 PRINCIPLES

Supervisors and managers have a responsibility to ensure that staff members for whom they are responsible are aware of general and specific rules, standards and procedures laid down for the regulation of work and conduct. Employees are required to familiarise themselves with these standards and procedures and to co-operate with their managers to ensure that they are followed.

In appropriate cases of minor misconduct or unacceptable performance or behaviour, managers should exhaust all other means of achieving the required standards before formal disciplinary action is taken. This may include setting clearly defined objectives and standards, monitoring them over a reasonable time period and providing additional coaching or training. In some cases this may also include reference to other appropriate sources of counselling and assistance such as mediation.

No disciplinary action will be taken until a case has been thoroughly investigated. When commencing an investigation into an allegation of misconduct or poor performance there shall be no assumption that disciplinary action will automatically follow.

At every stage of the procedure, employees will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made.

The line manager investigating a case must decide if further action should follow and assess the level at which the disciplinary hearing should be held. S/he must ensure that it is conducted by a management representative (whether line manager, director, chair, Board panel) authorised to take appropriate disciplinary action if the allegation is substantiated. A table showing the levels of management authorised to impose sanctions appears in section 14.

Disciplinary action will only take place where it is decided, following a disciplinary hearing, that misconduct had occurred or there has been a failure to improve performance and disciplinary action is appropriate.

Employees have the right to be accompanied by a trade union representative or work colleague of their choice at the disciplinary and appeal meetings

Employees will not be dismissed for a first breach of discipline, except in the case of gross misconduct, when the penalty will be dismissal without notice and without payment in lieu of notice.

The procedure may be implemented at any stage if the alleged misconduct or poor performance warrants such action.

Employees have the right to appeal against any disciplinary penalty imposed (see Section 16 below).

At all stages of the disciplinary procedure both the manager and the individual concerned must ensure the confidentiality of events and discussions. This will not preclude sharing such confidence when seeking advice. Any discussions with witnesses should be confined to the specific areas on which the witnesses may have information. Any unreasonable breach of confidence may itself be treated as a disciplinary case of misconduct.

All formal letters sent to an employee under the terms of this procedure shall either be handed to her/him personally or sent by Recorded Delivery. Copies of all correspondence shall be sent to his/her companion unless indicated otherwise by the employee.

Written warnings will cease to be 'live' following the specified period of satisfactory conduct or performance and will be disregarded for future disciplinary purposes.

### 3 THE PROCEDURE

Where discussion, coaching, training or other informal action fails to achieve the required improvement in performance or behaviour, or where the matter is more serious, the following procedure shall be undertaken:

- The relevant supervisor or line manager will identify and clarify the issue by establishing the essence of the problem. The matter must be investigated in a systematic and thorough manner by gathering information promptly, establishing relevant facts and taking into account statements of witnesses if appropriate.

The employee will be expected to attend any investigatory hearing called. S/he may be accompanied by a trade union representative or work colleague. The meeting will be recorded and a written statement taken.

- In serious cases, (the Chair) will have the power to suspend the employee, with full pay, pending investigation of the allegations. Suspension in these circumstances does not constitute disciplinary action. (See note in section 7 below)
- Following the investigation the employee should, without unavoidable delay, be given a written statement of the allegation, the possible consequences and be advised of the intention to hold a disciplinary hearing. This will state her/his rights under this procedure, including the right to be accompanied by a trade union representative or work colleague.
- At the same time the employee will be provided with copies of all documentation and supporting evidence to be presented at the hearing.
- The employee will be given time to prepare her/his case and the disciplinary hearing will normally be held not earlier than the fifth and not later than the tenth working day following notification. The disciplinary hearing shall be conducted in accordance with the procedure described in section 15 below.
- If following the disciplinary hearing it is decided to institute disciplinary action, one of the sanctions below may be applied.

## 4 DISCIPLINARY SANCTIONS

The manager applying a disciplinary sanction should also give the employee specific guidance to encourage improvement. Any recorded disciplinary sanction must contain: details of actions to be taken to enable the employee to achieve improvement; a set timescale within which improvement is expected to take place; and a plan for review to monitor and discuss progress with the employee. Actions may involve training, counselling or some other form of assistance that the supervisor/line manager/others will provide. Depending on the circumstances, the following range of disciplinary sanctions may be applied:

### **Stage 1 - Written Warning**

If conduct does not meet acceptable standards the employee will normally be given a written warning by his/her supervisor/line manager. S/he will be advised of the reason for the warning, that it is the first stage of the disciplinary procedure and of their right of appeal. A copy of this written warning detailing the complaint; the change in behaviour required; and dates for review will be kept in the employee's personal file but will be disregarded for disciplinary purposes after a specified period.

**Or**

### **Improvement Note for Unsatisfactory Performance**

If performance does not meet acceptable standards the employee will normally be given an improvement note by his/her supervisor/line manager. S/he will be advised of the reason for the note and of their right of appeal. A copy of this note detailing the performance problem; the improvement required; the set timescale for improvement; and dates for review will be kept in the employee's personal file but will be considered spent after a specified period - subject to achieving and sustaining satisfactory performance.

### **Stage 2 - Final Written Warning**

If performance is still unsatisfactory or if a further misconduct occurs, or if the misconduct is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal (in effect both first and final written warnings), the employee will be given a final written warning. This will give details of the complaint; the improvement required; the set timescale for improvement; and dates for review. It will warn that dismissal may result if there is no satisfactory improvement and will advise of the right of appeal. A copy of this final written warning will be kept on file but will be disregarded for disciplinary purposes after 12 months (in exceptional cases duration may be longer) subject to achieving and sustaining satisfactory conduct or performance.

### **Stage 3 - Dismissal**

If conduct or performance is still unsatisfactory and the employee fails to reach the prescribed standards, or if the offence constitutes gross misconduct, dismissal will normally result. The employee will be provided as soon as reasonably practicable with written reasons for dismissal, the date on which his/her employment will terminate and be advised of the right of appeal.

### **Stage 4 - Action Short of Dismissal**

In cases of a serious nature where dismissal is considered but it is decided to impose disciplinary action other than dismissal - such as temporary or permanent disciplinary transfer to alternative job or location, temporary or permanent disciplinary demotion - it may also be decided to retain a final warning permanently on the employee's personal file and advise them that any recurrence will lead to dismissal.

Where temporary or permanent disciplinary transfer is imposed, the employee will not suffer any disadvantage which is in breach of her/his terms and conditions of employment as to make the Organisation liable to a constructive dismissal claim. Disciplinary demotion will only be implemented with the employee's **written agreement** obtained prior to such action taking place.

## **5 DISCIPLINARY OFFENCES GUIDELINE**

Misconduct is defined as failure in personal conduct, persistent poor performance or deliberate infringement of policies, rules and procedures. In order that a consistent approach is made in treatment of disciplinary cases, a suggested list of possible disciplinary offences follows.

The list is provided as a guideline. The decision to take disciplinary action or the sanction imposed may vary according to the exact circumstances of the case. Reasons for disciplinary action may include but are not limited to:

- dishonesty;
- breach of confidentiality;
- negligent use, misuse or unauthorised use of the Organisation's property, including equipment, materials and information;
- health and safety issues, for example:
- threatened physical assault;
- abusive behaviour, offensive or obscene language or gestures directed at employees; members of the Board of Trustees; members of the public;
- deliberate or reckless damage to the Organisation's property;
- failure to observe established health, fire and safety rules and to report accidents or injuries whilst on duty;
- smoking in any other than designated areas;
- creating or contributing to unsanitary conditions;

- entering or leaving the Organisation's property except by designated entrances and exits;
- performance related issues, for example:
- serious neglect of duty which undermines the organisation;
- failure over a period of time to perform work to satisfactory standards;
- (with reference to the Organisation's Alcohol/Drug Abuse policy), failure to carry out duties effectively while under the influence of alcohol or drugs, other than medically prescribed;
- refusal to carry out a reasonable order of a manager;
- misuse of the individual's employed position towards a fellow employee or a member of the public, including oppressive or abusive conduct; bullying, harassment or victimisation;
- infringement of terms and conditions of service, for example;
- persistent lateness;
- absence from duty without permission of supervisor, line manager (director or Chair);
- excessive sickness absences with no appropriate certificates or authorisation;
- failure to comply with policies, procedures and regulations as laid down by the Organisation from time to time;
- engaging in or knowledge of activities on or off the premises which could be considered a discredit to the Organisation or its employees;
- undertaking additional employment which would counter the interests of the Organisation or would conflict with the employee's own position;
- making unauthorised statements to the press or news media relating to the Organisation's business;
- making a false statement of any kind within the realms of the Organisation's employment, knowing it to be false or having reckless regard as to either the validity or falseness of the statement.

## 6 GROSS MISCONDUCT

Gross misconduct is defined as misconduct serious enough to destroy the employment contract between the Organisation and the employee which makes further working relationship and trust impossible. Gross misconduct is normally restricted to serious offences. The principal reasons for summary dismissal could include but are not limited to:

- criminal offence which affects the individual's ability to carry out his/her job;
- physical assault by an employee on any other person;
- theft, misappropriation or unlawful destruction of property: the Organisation's, employees' or others' ;
- the giving or receiving of bribes or unauthorised gifts;
- serious infringement of safety rules or negligence which causes unacceptable loss, damage or injury;

- supplying security access codes to any unauthorised person;
- unauthorised disclosure of information or misuse of trust of a serious nature;
- making malicious or unfounded allegations of a serious nature;
- deliberate falsification of any documents or claims, including time sheets, overtime or expense forms;
- misconduct at work or away from work of such a serious nature as to bring into disrepute either the employee's position or the organisation;
- serious discrimination relating to a protected characteristic (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- harassment of a serious nature;
- deliberately accessing internet sites containing pornographic, offensive or obscene material;
- persistent alcohol or drug abuse;
- serious and/or persistent IT misuse;
- engaging in unauthorised employment during hours when contracted to work for the Organisation or during periods of designated leave, for example annual or sick leave, time off for training, etc.;
- failure to disclose unspent criminal conviction(s) or any convictions, whether spent or not, in respect of posts exempt under the terms of the Rehabilitation of Offenders Act 1974;
- providing false information on a job application form including false information concerning immigration status.

## 7 SUSPENSION

Suspension is not a disciplinary action and will normally be on full pay. It should only take place where it is considered that the employee may impede the disciplinary investigation or commit further offences if he/she remains at work. Such suspension will only be imposed after careful consideration and will be reviewed to ensure it is not unnecessarily protracted.

Normally the employee will be informed of his/her suspension at an interview with the Chief Officer (or Chair) and transport to the employee's home will be arranged.

S/he is entitled to have a union representative or work colleague present at the meeting.

In any case, the Chief Officer or Chair will inform the employee in writing that s/he is to be suspended immediately: stating the nature of the alleged offence, the purpose of suspension, and its anticipated duration. A copy of this letter will be provided to the employee's companion.

Suspension in these circumstances should normally be for a period of no more than five working days. However, in exceptional circumstances, the period may be extended. The employee will be informed in writing specifying the duration of the extension and the reasons for it. In cases of alleged gross misconduct suspension may continue until the appeal process, if pursued, has been concluded.

If, on completion of the investigation and the full disciplinary procedure, the organisation is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

## **8 CRIMINAL OFFENCE**

An employee will not be dismissed or otherwise disciplined simply because s/he has been charged with or convicted of a criminal offence. The consideration will be whether the conduct warrants action because of its employment implications. However, where the conduct requires the Organisation's prompt attention, there will be no need to await the outcome of the prosecution before taking reasonable action.

Where the police are called in, they will not be asked to conduct any investigation on the Organisation's behalf; nor will they be present at any disciplinary hearing or interview.

## **9 TRADE UNION REPRESENTATIVE**

No disciplinary action shall be taken against a trade union representative until the circumstances have been discussed with a full-time official of the trade union concerned.

## **10 PROBATIONARY EMPLOYEES**

This full procedure does not apply to probationary employees. However in all cases the requirements as outlined in the Acas Code of Practice on Disciplinary and Grievance Procedures must be followed.

The line-manager of a probationary employee will assess the employee's performance through the probationary supervision and review process. Warnings will be given to employees prior to any final action being taken should there be concerns about performance or conduct.

Where dismissal of the probationary employee is considered due to unsatisfactory performance or conduct, or in cases of gross misconduct, the employee will be notified in writing of the problem, the time and venue for the probationary review meeting, their right to be accompanied by a union representative or a work colleague of his/her choice and the potential

dismissal outcome. A meeting will be held and the employee will be entitled to appeal.

If the employee wishes to appeal against the dismissal, he/she must do so in writing to the Chair within five working days of receiving written notification of the dismissal, stating the reasons for the appeal. Any documents submitted in support of the appeal must be attached.

Arrangements for the appeal hearing will be made by the Chair who will ensure that a note-taker is present. Where possible, at least two members of the Board will constitute an Appeals Panel, excluding any who line-manage the employee and who made the decision which is the subject of the appeal. The employee may be accompanied by a union representative or a work colleague of his/her choice at any appeal hearing.

## **11 FAILURE TO ATTEND A DISCIPLINARY HEARING**

If an employee is unable to, or decides not to take part in any of the meetings under this procedure, s/he must notify the manager responsible for conducting the meeting in writing, specifying the reasons for non-attendance. This must be done 48 hours in advance of the meeting.

If sickness prevents an employee from attending, then normal procedures for reporting sickness absence apply.

If an employee does not attend a disciplinary hearing and does not provide prior written explanation giving reasonable justification of non-attendance, the disciplinary officer will send the employee a recorded delivery letter. The letter will instruct him/her to attend a hearing at a new date which may include an additional charge of failure to attend and inform.

If the employee does not attend the disciplinary hearing at this new date and time and does not provide prior written explanation giving reasonable justification for non-attendance, the disciplinary officer will proceed to hold the hearing at the set date inviting the employer's companion to be present. Such a hearing will normally include the additional charge of failure to attend and inform.

## 12 APPEAL

An employee may appeal against any formal disciplinary action taken under this procedure to the Organisation's Appeals Committee. An appeal may be lodged against the decisions of the disciplinary hearing as regard to the finding and/or outcome. It may also be lodged against failure to follow this procedure adequately.

An employee wishing to appeal against a disciplinary decision, must do so in writing to the Chair within ten working days of receiving written notification of the disciplinary action, stating the reasons for the appeal. Any documents submitted in support of the appeal must be attached.

Arrangements for the appeal hearing will be made by the Chair. The appeal shall be conducted in accordance with the procedure detailed in section 16 below.

## 13 EMPLOYMENT TRIBUNAL

Nothing in this procedure shall affect an employee's right to make a complaint to an Employment Tribunal in accordance with relevant employment legislation. It is recommended that before taking such action the employee seeks appropriate legal advice.

## 14 DISCIPLINARY SANCTIONS TABLE

Sanction	Lowest Level of Management Authorised to Impose Sanction
Informal Action	Supervisor/line manager
Suspension	CEO/Chair
Extension of Suspension period	CEO /Chair
Written Warning/Improvement note	All line managers
Final Warning; dismissal of probationary employees	CEO /Chair
Dismissal; Action short of dismissal: disciplinary transfer, disciplinary demotion	Disciplinary Panel (where possible at least two members of the Board not previously involved in the case)

## 15 THE DISCIPLINARY HEARING

The Disciplinary Officer (as authorised within the structure described in 14 above) will conduct the disciplinary hearing.

The employee's line manager who has conducted the investigation will be the Presenting Officer responsible for presenting the case against the employee.

The employee has the right to be accompanied by a trade union representative or work colleague.

Where possible, a note-taker, who must be uninvolved in the case, will take down a record of the proceedings.

Witnesses should not be present throughout the hearing. They should be called in, one by one, to give their evidence and asked to withdraw once they have done so.

- The Disciplinary Officer (or Chair of the Disciplinary Panel) will open the proceedings with an explanation of the purpose of the hearing and the procedure to be followed, introducing those present. S/he will read aloud the allegations and ask the employee if he/she wishes to take the opportunity to admit or deny them.
- If the employee admits the allegations, s/he will be asked if they or their companion wish to offer any explanation for the misconduct or to have any mitigating circumstances taken into account.
- The hearing will then proceed to stage (xv) below.
- If the employee denies the allegations, the following steps will take place:
  - The Presenting Officer will state the case against the employee in the presence of the employee and his/her companion.
  - The employee or his/her companion will be given an opportunity to reply to the allegations and ask questions of the Presenting Officer.
  - The Presenting Officer may call witnesses.
  - The employee or his/her companion will have the opportunity to question any witnesses called by the Presenting Officer.
  - The Disciplinary Officer (or Panel) may ask questions for clarification of the Presenting Officer and any witnesses.

- The employee or his/her companion will put the employee's case in the presence of the Presenting Officer.
- The Presenting Officer will have the opportunity to ask questions of the employee, his/her companion and of any witnesses called by the employee.
- The Disciplinary Officer (or Panel) may ask questions for clarification of the employee, his/her companion and any witnesses called by the employee.
- The Presenting Officer will have the opportunity to sum up the case against the employee, but may not introduce any new material.
- The employee or his/her companion will have the opportunity to sum up the employee's case, but may not introduce any new material.
- The employee, his/her companion, the Presenting Officer, and note-taker will withdraw.
- If recall is necessary, both parties are to return regardless of the point giving rise to doubt.
- The Disciplinary Officer (or Disciplinary Panel) will consider the case in private:

**S/he (they) must first decide whether the case against the employee has been established on the balance of probabilities, i.e. whether misconduct is confirmed or the employee's performance is found to be unsatisfactory.**

If the case against the employee is proven, and before imposing a disciplinary penalty s/he (they) must consider:

- the level of disciplinary penalty indicated by the procedure;
- any special, mitigating circumstances which might make it appropriate to lessen the penalty;
- the employee's disciplinary record, general record, position and length of service;
- whether there are any other 'live' warnings;
- how the Organisation has dealt with similar cases in the past;

- whether the proposed penalty is reasonable in view of all the circumstances.
- (xviii) The Disciplinary Officer (or Chair of the Disciplinary Panel) will inform the employee of the decision at the conclusion of the deliberations, if practicable. In any case, s/he shall provide the employee with written confirmation of the decision within five working days of the hearing. This will include notifying the employee of his/her right of appeal and the procedure to be followed.

If at any time during the proceedings it becomes apparent that there is no case for the employee to answer, an immediate adjournment may be called by the Presenting Officer.

The hearing may be adjourned by either side or by the Disciplinary Officer (or Chair of Panel), if it is considered necessary to gather further information or evidence or clarify any issue. The hearing will be reconvened as soon as possible.

## **16 APPEALS PROCEDURE**

An employee may appeal against any formal disciplinary action taken under this procedure to the Organisation's Appeals Committee. An appeal may be lodged against the decisions of the disciplinary hearing as regard to the finding and/or outcome. It may also be lodged against failure to follow this procedure adequately.

Where a probationary employee is dismissed, s/he shall have the right of appeal against this decision as detailed in section 10 above.

An employee wishing to appeal against a disciplinary decision, must do so in writing to the Chair within ten working days of receiving written notification of the disciplinary action, stating the reasons for the appeal. Any documents submitted in support of the appeal must be attached.

Arrangements for the appeal hearing will be made by the Chair who will ensure that a note-taker is present. The appeal shall be conducted in accordance with the procedure set out below.

The Appeals Panel may include members of the Board of Trustees of the Organisation, excluding those who were members of the Disciplinary Panel who made the decision which is subject of the appeal, or the Chair where s/he has been involved at an earlier stage of the disciplinary procedure. Where possible, at least two members of the Board will constitute an Appeals Panel,

one of whom will be the panel's Chair.

The employee may be accompanied by a union representative or a work colleague of his/her choice at any appeal hearing.

The management representative at the appeal hearing will be the Disciplinary Officer responsible for the decision that is the subject of the appeal. Depending on the stage of the disciplinary procedure implemented in the relevant case, this may be the line manager, CEO, Chair, or the Chair of the Disciplinary Panel.

The appeal will be heard as soon as possible and where reasonably practicable not later than 20 working days from the date of receiving the employee's request for appeal.

The date and time of any appeal hearing will be agreed between the employee, their companion, the management representative and the Panel members.

The appeals process provides the opportunity for the Appeals Panel to consider any new evidence not previously presented; whether the decision of the disciplinary hearing was reasonable in the circumstances; or whether the disciplinary procedure was followed adequately.

### **Conduct of Appeal Hearings**

The Chair of the Appeals Panel will conduct the hearing as follows:

- The Chair of the Panel will open the proceedings with an explanation of the purpose of the hearing and the procedure to be followed, introducing those present. S/he will read aloud the employee's reason for lodging an appeal as submitted in writing to the Chair.
- The employee and/or his/her companion will put his/her case in the presence of the management representative outlining the grounds for the appeal and the reasons why they feel the original decision was incorrect. The employee or his/her companion shall call any witnesses or refer to any documents as necessary. Witnesses shall be called in turn and for each witness the procedure will be:
  - the employee or companion questions the witness
  - the management representative questions the witness
  - the Appeals Panel question the witness
- The management representative will ask questions of the employee.
- The Appeals Panel will ask questions of the employee .
- The management representative will put the case for disciplinary action in

the presence of the employee and his/her companion calling witnesses and referring to documents, as necessary. Witnesses shall be called in turn and for each witness the procedure shall be as in (ii) above.

- The employee and/or companion will ask questions of the management representative.
- The Appeal Panel will ask questions of the management representative.
- The management representative and the employee or his/her companion will sum up their respective cases and then withdraw.
- The Appeals Panel will consider the case in private. The decision of the Panel shall be notified to the employee verbally, if possible at the end of the Hearing and in the presence of the management representative. In any event, it will be confirmed in writing within five working days of the hearing.
- The decision of the Appeals Panel will be final.

## 17 RECORDS

Records will be kept detailing:

- the nature of any breach of disciplinary rules or unsatisfactory performance;
- the employee's defence or mitigation;
- the action taken and the reasons for it;
- whether an appeal was lodged and its outcome;
- any grievances raised during the disciplinary procedure;
- any subsequent developments;
- copies of all correspondence relating to this procedure including recorded written warnings; and
- notes of any formal meetings.

These records will be kept confidential and retained in accordance with this disciplinary procedure and the Data Protection Act 1998. Employees will be entitled to have access to their own records in accordance with the Act. Copies of any hearing records will be given to the employee concerned. In certain circumstances (for example to protect a witness) the employer might withhold some information.