

# Human Resources policy

Disciplinary, Conduct and Capability

Human Resources / August 2016

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## 1. Introduction

The overriding aim of this policy is to consider the substance of any case on its own individual facts and merits.

The aim of this policy is to assist you in adhering to your contract of employment and our policies in relation to performance, attendance, safety and conduct generally, in line with our values and behaviours.

The procedure detailed within this policy is intended to be used in cases where your conduct and/or capability is in question.

A non-exhaustive list of the types of misconduct which may lead to formal action is available in appendix A.

## 2. Policy purpose

This policy provides a frame work for managing all aspects of capability, discipline and dismissal.

This document is an aid to improvement and corrective action. Sanctions taken will be determined by the available facts relevant to each case.

Without prejudice to the above, this policy/ procedure does not apply to:

- Termination by mutual consent
- Termination by way of redundancy (see our management of change policy)
- Ending of fixed term contracts (see our management of change policy)
- Termination by way of retirement

## 3. Related policies & employment legislation

We remain up to date and compliant with all current employment legislation.

In addition, we have produced the procedures in this policy in line with the ACAS code of conduct.

## 4. Roles

Our managers will investigate issues in line with the following guidelines, with the HR team providing appropriate assistance.

All managers can conduct investigations, set targets and monitor performance. Our departmental managers can conduct formal hearings (and issue sanctions up to dismissal) and hear appeals against sanctions short of dismissal. Our heads of service/assistant directors and above can conduct formal hearings (and issue sanctions up to dismissal) also hear appeals against dismissal.

Each stage of the formal process will be conducted by an appropriate manager no less senior than at the previous stage and wherever possible, they will be more senior. HR will assist in identifying the appropriate level.

Investigations and hearings will normally be conducted by managers within the same department as those under investigation.

In some circumstances this may not be appropriate/ possible and HR will appoint a substitute. At each stage, this decision will be reviewed and it may be that the matter returns into the usual management structure at either hearing or appeal stage.

The usual line management will be kept informed of key decisions by the investigating/ hearing manager. They will be informed of the final outcome, be able to view the documents associated with the formal procedure and will be involved in creating personal development plans as appropriate.

## 5. General principles

When investigating matters, we encompass the following principles:

- a) Conduct is concerned with behaviour whereas capability relates to a person's ability to complete a task.  
Simplistically, the distinction between capability and conduct can be expressed as "can't do" (capability) as against "won't do" (conduct), the latter implying some degree of control, deliberation and/ or choice.
- b) When your employment begins, or when you change role, your new line manager will explain the work requirements.
- c) Our role profiles accurately convey the main purpose and scope of each job and the key tasks involved. These are reviewed at least annually within the development review discussion between you and your line manager and at other times as required.
- d) All cases will be fully investigated to assess whether a sanction should be applied.
- e) At every stage in the procedure you will be advised of the specific details of the matter under investigation and given the opportunity to state your case.
- f) You will not be dismissed because of inability, as opposed to unwillingness, to meet the required work standards unless informal managerial counselling (see section 6), specific learning and development training/ retraining/ support and a chance to improve have been given.
- g) Where reasonable managerial support is already in operation, you will be given the time to improve your performance and for any relevant identified learning & development to be carried out.
- h) At all stages in the formal procedure, you will have the right to be accompanied by a Trade Union representative or work colleague. Both management and the Trade Union are committed to ensuring that arrangements for representation do not unduly delay the proceedings. There is a recognition that progress must be made in any individual case.

- i) You will be given an explanation for any formal action taken and the improvement(s) expected of you.
- j) You will have the right of appeal against any sanction imposed.
- k) Any of the sanctions set out in the procedure may be imposed based on the facts of the case, taking any mitigating circumstances into account.

## **6. Informal action**

Our managers will discuss performance issues with employees as they arise.

It is recognised that a sudden deterioration in the standard of work could be the result of job-related or personal factors which could be of a temporary nature.

Minor misconduct or capability will normally be dealt with in the first instance by the employee's line manager giving informal support/ guidance.

Your manager will take reasonable steps to provide support by means of learning and development, advice, informal managerial support etc. before considering starting formal proceedings.

Types of informal action include:

### **6.1 Managerial support**

If your manager has continuing concerns about your general level of capability or conduct, these will be addressed with you. Wherever possible, you will work together to jointly identify difficulties and agree a way to overcome these problems.

Your manager will keep a note of the date, circumstances and advice given and time scale for improvement. This paperwork will be disregarded after successful completion of the improvement timescale specified. If the required outcome of the informal support is not achieved, these notes may be referred to during formal proceedings.

### **6.2 Personal development plans**

You and your manager, supported by your TU representative, will work together to identify, agree and document a set of SMART targets (i.e. Specific, Measurable, Achievable, Realistic & Time bound) to be achieved and standards of work to be attained, within an agreed timescale. Any information received from occupational health will be taken into account. Whilst this is not a formal sanction, a copy of the plan will be held on your personal file.

Arrangements may be made for reasonable support, resources and/or training or specialist assistance e.g. Occupational health, where appropriate.

Arrangements for monitoring your progress should also be agreed wherever possible. Monitoring will normally be done by means of regular meetings between you and your line manager. Again, these will be documented and held on file.

Should you fail to agree to the proposed standards or targets, your manager may, nevertheless, set standards or targets, which will be in line with fulfilling your role profile/ job description.

At the end of the agreed period (or during this period if necessary), a further meeting will take place at which your progress will be reviewed. If your performance has not improved as per the improvement plan, the reasons will be discussed, the outcome of which may be to refer the matter to the formal procedure detailed below.

## **7. Formal procedure**

If informal action fails to resolve the issues, or if informal action is not believed to be appropriate, the formal procedure may commence.

This section outlines rights and responsibilities with a view to enabling a fair and clear process to take place.

### **7.1 In your first year of employment**

We believe your first year of employment is a crucial time to demonstrate your ability and commitment to your new role and to the organisation.

If the employment relationship is not constructive, it is better for all parties for this to be identified an early stage. Therefore, to expedite the decision making process, a modified procedure is in place you during your first year of employment.

It is expected that the stages of the procedure detailed in this policy, relating to informal action and investigation etc., will apply up to the point where a formal hearing takes place and a hearing outcome is decided by the hearing manager.

At the formal hearing one of two outcomes will be available to the hearing manager: no sanction or dismissal. There is no option for an improvement plan, written or final written warnings. The alternatives to dismissal detailed in section 9.3 are also not available.

The right of appeal remains the same, regardless of length of service.

### **7.2 Suspected bribery/ fraud/ corruption**

If it becomes apparent during the course of an investigation that there is a suspicion of bribery, or that fraudulent or corrupt acts may have been committed, the HR representative will inform the Internal Audit Manager.

In these circumstances, Internal Audit will assess and where appropriate, investigate reported instances in accordance with guidance provided within the Combined Authority's fraud response plan.

Internal Audit will be consulted as necessary throughout the remainder of the D,C&C investigation. They will provide professional advice and perform appropriate specific work to obtain evidence.

Following an examination of records and/ or the conduct of interviews with relevant persons, findings will be documented and a report made to management for appropriate action to be taken. Internal Audit will be given the opportunity to comment on such documentation/ reports. This report is separate to that of the disciplinary investigation and relates to any procedural weaknesses that require review to prevent fraudulent acts in the future.

The Combined Authority's anti-fraud, bribery and corruption policy/ strategy defines fraud as, 'the intentional distortion of financial statements or other records by persons internal or external to the Combined Authority, which is carried out to conceal the misappropriation of assets or otherwise for gain'.

Corruption is defined as 'the offering, giving, soliciting or acceptance of an inducement or reward which may influence the action of any other person'.

### **7.3 Being accompanied during investigations**

Whilst there is no specific right for you to be accompanied during formal investigations, we recognise the value a companion can bring.

For this reason, where you are the subject of an investigation and required to attend an investigatory meeting, you will be given the opportunity to bring either a TU representative or colleague for support. Arranging this support should not delay the investigation.

The role of the representative/ colleague during an investigation is one of support; it is not expected that they will answer on your behalf; however they may assist the investigation by asking questions or suggesting additional lines of enquiry.

### **7.4 Being accompanied during formal hearings & appeals**

You have the right to be accompanied during formal hearings and the appeal process by a work colleague or a Trade Union representative.

The right to be accompanied does not extend to non-employees other than Trade Union representatives. This includes family members (not employed by the Combined Authority) or solicitors.

If you are to be accompanied, you need to inform the investigating manager of who you have chosen prior to the meeting. This will assist in making arrangements to suit all parties.

HR will send your representative electronic copies of all documents and letters sent to you. Should you **not** wish this to occur, you must inform the HR department as soon as possible.

If you have been suspended, you are prevented from contacting your colleagues, so if you wish to arrange for a work colleague to accompany you, they should contact HR who will arrange for their colleague to contact them.

The work colleague or Trade Union representative can address the hearing to put forward and sum up your case, respond on your behalf to any views expressed at the meeting, with your prior consent, and confer with you during the hearing. They may also question witnesses on your behalf. The companion does not, however, have the right to answer questions on your behalf, address the hearing if you do not want them to, or prevent the manager from explaining their case.

### **7.5 Meeting timings**

Every effort will be made to arrange meetings during your normal shift.

If you and/ or your representative request that the meeting takes place outside of your normal shift pattern, this will not normally be paid.

In exceptional circumstances, the line manager/ HR may request that you attend a meeting outside your normal shift pattern. In this case, local management have the discretion to agree time off in lieu or pay for the time of the meeting and reasonable travel time to and from the meeting location. This does not apply when you are on suspension and attending meetings during time you would have otherwise attended work.

### **7.6 Dealing with delays**

It is in the interests of all parties to avoid undue delay and to move the issue forward. In the interests of working together, availability to attend meetings will be sought in advance of arrangements being made.

If, for genuine reasons, you are unable to attend a meeting, an alternative date will be arranged.

Where this relates to a formal hearing, the new arrangements will be scheduled to take place within seven calendar days of the original date wherever possible.

If your companion or representative cannot attend a hearing date, another date and time should be proposed which must be within seven calendar days of the original date. If this is suitable for all parties the hearing will be arranged. If not, the HR representative will propose a new hearing date.

If you fail to attend a formal hearing as arranged without informing us, your Manager will make efforts to contact you. If that is not successful, the hearing will be rearranged and should you fail to attend for a second time, the hearing will be conducted in your absence based on the available information. A sanction decision will be made and you will be notified of the outcome in writing.

### **7.7 Sickness and ill health**

If you are absent due to sickness after being informed of the investigation or at any point during the formal process, we will continue with the process as far as possible in your absence. The investigating manager will interview

any other witnesses on the matters in question and will collect and investigate any documents that may be relevant to the case. The investigation will be completed in all respects, save for enquiries with you. Some conditions may mean you are still well enough to attend an investigatory meeting, hearing, or appeal even if you are not well enough to perform the duties of their job.

You will be recorded as being absent and will receive pay in line with our sick pay scheme. If you are suspended at the time, you will continue to be subject to the restrictions/ arrangements of the suspension in accordance with section 7.9.

Medical advice may be sought via our occupational health supplier who would ordinarily liaise with your GP. Where there is a conflict of opinion or contradictory information provided, further clarity from both sources may be sought, however the occupational health professional's advice, which is role specific, will be given prior consideration. The manager will make a reasonable judgement taking all the available information into account, with advice from HR.

In the rare circumstances where you are considered not well enough to take part in the process, the position regarding fitness to attend and take part will be medically reviewed, by a GP and/or occupational health advisor. Absence will be managed in accordance with normal sickness absence procedures.

If medical opinion is that you are well enough to take part in the process, this will continue, subject to any recommendations set out by the medical professional. The Combined Authority will, where possible, make reasonable adjustments that are required.

## **7.8 Offences alleged against recognised Trade Union representatives**

Trade Union representatives are subject to the same standards in their conduct as other Combined Authority employees. They have the same rights as other employees and can be accompanied by their full time official union representative.

Where the investigation relates to a representative of a recognised Trade Union, the head of HR will discuss the matter with the branch secretary / branch chair/ regional organiser of the situation, after obtaining your agreement, before any further action takes place.

## **7.9 Suspension and alternative options**

Suspension is a neutral act and does not signify guilt on your part, nor is it considered a formal sanction.

Suspension may be applied where it is considered to be in the best interests of all parties for you not to remain at work during an investigation and/ or formal hearing process. This will not have any impact on your remuneration.

This action may be considered in circumstances including (but not limited to) where:

- the investigation may be prejudiced by you remaining at work;
- it may be unfair to expect you to continue working;
- there are serious concerns raised by the nature of the allegations under investigation;
- the health and safety of other employees, contractors or users of the Combined Authority services may be jeopardised by your continued presence at work; or
- medical factors are affecting your ability to continue to carry out your duties.

Alternatives to suspension will be considered and it may be that a brief period of temporary redeployment to suitable alternative duties, without loss of pay, is arranged where all parties are in agreement. Similarly, consideration may be given to whether you could perform your normal duties from another location.

If it is necessary to suspend you whilst an investigation takes place, you will (as far as reasonably practicable) be informed verbally in the first instance by the investigating manager. The suspension will be confirmed in writing indicating the reason for the suspension, how long it is expected to last and confirm that you will continue on full pay for the duration of the suspension.

The investigating manager, in liaison with Internal Audit (if appropriate), will consider the need for denying individuals access to colleagues/ premises/ property/ records relevant to the investigation. Where necessary, steps will be taken to change locks, withdraw access to computer systems and advise colleagues accordingly to ensure a complete and objective investigation can take place.

Suspensions should be as brief as possible and should be reviewed on a regular basis by the investigating/hearing manager (as appropriate). Where a review finds it appropriate to continue the suspension, this will be confirmed in writing, stating the reasons and how long it is likely to continue.

Any pre-authorised annual leave whilst suspended will still stand unless you request to cancel the leave. No hearings or meetings will take place during the leave period.

## **8. Formal investigations**

Where concerns arise regarding your conduct or capability, a careful and full investigation will be conducted.

It is important to carry out prompt investigations without unreasonable delay to establish the facts of the case. In some cases this will require the holding of an investigatory meeting with you before proceeding to any formal hearing. The investigatory stage focusses on collating evidence for use at a formal hearing and it may not be necessary to meet with you.

Whilst every effort will be made by the investigating manager to ensure that a thorough investigation has taken place, you and/ or your representative should provide feedback if further evidence/ information comes to light that may have a bearing on the case, particularly where cases are complicated.

## 8.1 Witnesses

Witnesses are individuals whose contribution to an investigation is required, but they are not the subject of the investigation.

Please note that the witness has no specific right to be accompanied when giving a statement and they are required to sign their statement.

Witness statements are taken by the investigation manager. If the individual under investigation, or their representative, know of specific individuals who may be able to contribute to the investigation, they will inform the manager to ensure they are spoken to.

They may be required to attend the hearing. Where this is the case, the individual will be notified in advance.

There must be a compelling reason for any witness to request anonymity i.e. where the witness may have reasonable belief of recrimination. In these circumstances, a statement may be given anonymously and the CA will make every effort to maintain the witnesses' anonymity. However this may not always be possible; in which case the witness will be advised before any disclosure so that they have the choice whether or not to provide their statement.

To ensure a fair process, witnesses who are employees are expected to participate in the investigation. In the event that a witness is unwilling to participate, HR advice will be provided based on the circumstances involved and action will be taken according to the circumstance.

## 8.2 Investigation Outcomes

Where the investigating manager does *not* believe there is a case to answer following an investigation, they will meet with you to explain this and confirm it in writing.

If the investigating manager feels that there *is* a case to answer following an investigation, a formal hearing will be arranged (see section 9).

It may be the case that the investigation identifies other issues to be considered in the hearing. In any case, the allegations being put forward to a formal hearing will be specified in a letter to you.

If it is established that a criminal act has been committed, Internal Audit will liaise with the appropriate director and notify the police of the incident.

## **9. Formal Hearings**

Hearings will be conducted by a manager no less senior than the Investigating manager and senior wherever possible.

You will be informed in writing by the investigating manager of:

- the specific complaint(s) or allegation(s);
- your rights under the procedure; and
- possible sanctions that could be applied.

You will normally be given at least seven calendar days' notice of the hearing, unless shorter notice is agreed with you and your representative.

Packs will be prepared including all evidence and given to you in advance of the hearing. If a representative has been identified, HR will send them copies of all documents and letters sent to you (See also section 7.4).

Where evidence is obtained that is not a written document, e.g. CCTV footage, you and your representative will have the opportunity to view it in advance of the hearing.

If any new evidence becomes available after the pack has been given to you, this will be sent to you as soon as possible.

All parties are expected to conduct themselves in accordance with our values and behaviours. The hearing manager may adjourn the meeting if they feel any behaviour is inappropriate.

At the conclusion of the hearing the hearing manager will adjourn the hearing to consider the matter. During the adjournment, should the hearing manager wish to ask additional questions of either side both parties will be recalled.

### **9.1 Conducting the hearing**

The investigating manager will present the case for moving to a formal hearing or provide a written report of the investigation where they are unable to attend. A HR representative will take notes and provide advice to the hearing manager.

You will be given the opportunity to state your case. Where the facts are in dispute, you may call witnesses as appropriate.

Either party can request an adjournment at any time to allow time to confer privately.

The hearing manager may ask the investigating manager to leave at this point. The investigating manager should remain available in case they are required to return to answer any queries.

## **9.2 The role of witnesses during the hearing**

If you want to call a witness, please inform HR in advance of the hearing in order to ensure they are available and to avoid any delay to proceedings.

Witnesses will be asked to read out a statement. You, your representative and the hearing manager may then ask questions of the witness. The hearing manager will control the questioning process and will disallow any question they believe to be inappropriate or intimidating or if the discussions are moving away from the point of the hearing.

If you want to question the statement of an anonymous witness, your questions can be presented to the hearing manager who will adjourn the hearing to get the responses which will be given to you.

## **9.3 Hearing outcomes**

When deciding if it is appropriate to apply a sanction and if so, at what level, the hearing manager will take into account:

- the nature of the offence;
- your length of service and conduct and capability record;
- your position and responsibilities;
- any factors put forward in mitigation (including remorse);
- relevant policies and previous practice in enforcing them;
- where a possible outcome is dismissal, alternatives will be considered

The hearing manager may also choose to apply one of the informal approaches listed in section 5 to aid the employee's improvement. This could be in addition to the application of a sanction.

The HR representative will provide unbiased advice on sanctions delivered previously in similar cases, and in line with employment legislation, but the decision is solely that of the hearing manager.

The sanctions available are outlined below:

### **Written warning**

The first formal sanction is a written warning. A copy of the warning will be placed on your personal file and will specify why it has been given, by whom, relevant previous action, the duration the warning will remain live and the improvement required.

The written warning will remain 'live' for six months and will be disregarded once it expires.

### **Final written warning**

The second level of formal sanction is a final written warning. A copy of the warning will be placed on your personal file and will specify why it has been given, by whom, relevant previous action, the duration the warning will remain live, the improvement required. It will also make it clear that any

further type of misconduct, breaches of rules or failure to comply with the warning could lead to dismissal.

The final written warning will remain 'live' for 12 months and will be disregarded once it expires.

### **Dismissal**

The third level of formal sanction is dismissal. Dismissal will be reserved for cases where the formal conduct and capability procedure has failed to produce acceptable standards, or in cases of gross misconduct or serious breaches of rules; or where previous sanctions have failed to produce the required improvements. (Examples of cases which may justify summary dismissal are provided in Appendix A)

Dismissal will take effect immediately (without prejudice to your right of appeal) in the case of summary dismissal. In all other cases the dismissal will follow the relevant period of contractual notice or payment in lieu of that notice (where payment in lieu is made, the dismissal takes effect immediately, again without prejudice to rights of appeal).

### **Alternatives to dismissal**

Where dismissal is the identified outcome and depending on mitigating exceptional circumstances, the hearing manager may, at their absolute discretion, propose an alternative to dismissal. In these circumstances, a lesser sanction short of dismissal can be issued and you will either be permanently or temporarily transferred to an alternative post/ location (including demotion) within the organisation. This is dependent upon a suitable vacancy existing, normally within the same department.

Please note if demotion is given as a sanction, pay protection will not apply.

All parties need to be in agreement to the proposed alternative to dismissal. If agreement cannot be reached, then dismissal will remain the sanction.

## **10. Appeals procedure**

You may appeal against the decision of the hearing if:

- You have a good reason to think the finding or penalty is unfair;
- New evidence comes to light; and/ or
- You have a good reason to think the procedure was not followed correctly

Appeals need to be made in writing within seven calendar days from the date of the letter containing the decision of the hearing (unless an alternative date is agreed).

If you feel you need more time in which to submit your appeal (ordinarily this is due to annual leave or ill health), contact the HR representative.

### **10.1 Conduct of appeal hearing**

Appeal hearings will be heard by an appropriate manager who will not be junior to the hearing manager and senior wherever possible.

The appeal will be heard based upon the appeal grounds, any matters arising during the appeal process and the merits of the individual case. It will consider whether the original outcome was reasonable.

Sections 7.3 to 7.7 will also apply to the appeal stage.

### **10.2 Appeal decision**

The decision reached at an appeal will normally be given verbally at the end of the hearing, following an adjournment for consideration of the case. It will also be confirmed in writing.

The outcome of an appeal can be:

- No change to the original decision made by the hearing manager.
- A reduction or removal of the formal sanction.

The outcome of an appeal cannot be:

- An increase to the sanction applied at the hearing.

In cases of employees who are summarily dismissed without notice for gross misconduct, but who are subsequently reinstated on appeal, their full pay for the period between dismissal and reinstatement will be paid i.e. they will not suffer a detriment.

Employees dismissed with notice will normally have their appeal heard within their notice period (or the equivalent timeframe if they received a payment in lieu). However, where this is not possible, full pay for the period between the end of their paid period and reinstatement will be given.

There is no further right of appeal within the Combined Authority's procedure.

## **11. Losses resulting from bribery, fraudulent or corrupt activities**

The Combined Authority will seek to recover losses arising from bribery, fraudulent or corrupt acts.

Recovery may be by one of the following methods:

- Agreement with you to repay amounts due, either in full or by instalments;
- Through a pension scheme;
- Through the Combined Authority's insurers;
- Through legal proceedings/ court action (involving the Combined Authority's legal department).

## **12. Equality Impact Assessment**

In the creation of this policy, consideration has been given to any possible adverse equality impact for the following groups: disability; gender; gender reassignment; marital status (including civil partnerships); sexual orientation; race; religion or beliefs; age; pregnancy and maternity. The policy is considered to have little or no adverse equality impact.

## **13. Changes to Policy**

The Combined Authority reserves the right to amend the details of this policy as required following consultation with recognised trade unions and other relevant parties.

This policy will be monitored and reviewed on an annual basis, to ensure that it meets the needs of the Combined Authority and ensure compliance with relevant legislation.

A written request can be made to review this policy at any time, by any of the signatories, giving appropriate reasons for requesting the review.

## **APPENDIX A**

### **EXAMPLES OF GROSS MISCONDUCT**

The following is a non-exhaustive list of the types of conduct which may justify Summary Dismissal:

- Theft or fraud
- Bribery or Corruption
- Physical violence or bullying
- Deliberate and serious damage to property
- Serious misuse of an organisation's property or name
- Deliberately accessing internet sites containing pornographic, offensive or obscene material
- Serious insubordination
- Unlawful discrimination or harassment
- Bringing the organisation into serious disrepute
- Serious incapability at work brought on by alcohol or illegal drugs
- Causing loss, damage or injury through serious negligence
- A serious breach of health and safety rules
- A serious breach of confidence
- A serious breach of the CA's policies or procedures
- Any attempt to commit any of the above

### **EXAMPLES OF OTHER MISCONDUCT:**

The following is a non-exhaustive list of the types of conduct which may lead to formal action:

- Absence without permission or good cause.
- Failing to report for duty at the appointed time and place.
- Posting or distributing literature at work or in the CA's premises with malicious intent.
- Refusal to comply with a lawful request, instruction or order.
- Failure to wear issued uniform.
- Repeating minor offences which the employee has previously been disciplined.

### **NOTE:**

No list can be exhaustive and circumstances must be taken into account in all cases. The above lists should be considered for general guidance only. It should not be assumed that because an offence does not appear that an employee is immune from formal action.

