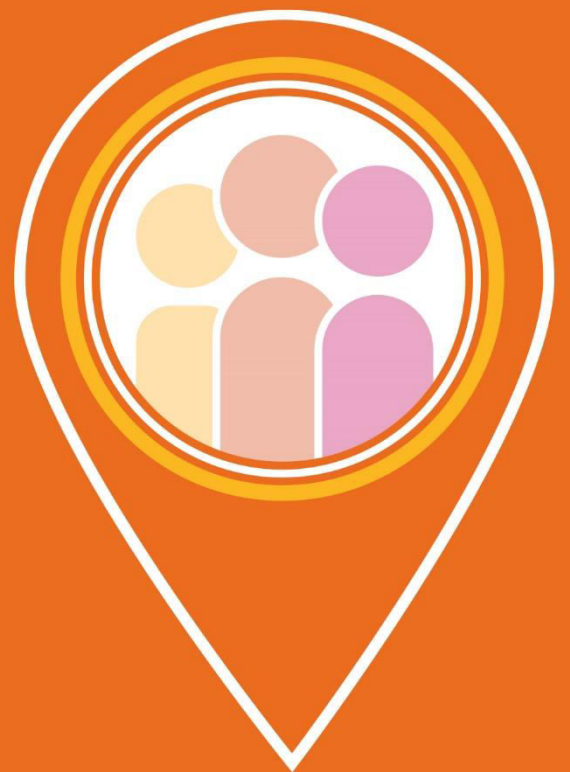




children's  
hearings  
scotland

# HR Disciplinary Policy



# Review Schedule

<b>Document Name/Title</b>	Disciplinary Policy
<b>Document Type</b>	HR Policy
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<b>Version No.</b>	2.0
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## 1. Introduction

- 1.1 This Disciplinary Policy and Procedure applies to all employees of CHS and its main aim is to promote fairness, equity and consistency in the treatment of all employees. The Disciplinary Policy and Procedure helps CHS to operate effectively and to set standards of conduct and performance at work. It helps to ensure all employees are aware of the standards of behaviour expected of them, and that they adhere to these standards.
- 1.2 In addition, the Disciplinary Policy and Procedure provides a fair and consistent method of dealing with any failure to achieve acceptable standards of conduct or performance and can help an undisciplined or poorly performing employee to become effective again. The purpose of the Policy is not to be punitive, but rather to provide a method of encouraging improvement.

## 2. Aims of Policy

- 2.1 The aims of this Policy and Procedure are to:
- promote fairness, equity and consistency in the treatment of individuals
  - to ensure employees are aware of and adhere to acceptable standards of conduct and performance at work
  - provide a fair and consistent method of dealing with any failure to maintain acceptable standards of conduct or performance
  - ensure CHS' employee relations approach complies with legislation and best practice.

## 3. Principles of Discipline

- 3.1 Regardless of the situation, the following general principles will help to ensure the matter is managed more effectively:
- Fairness and Consistency – it is essential to ensure the credibility of the Disciplinary Policy and Procedure. The attitude and conduct of employees will be affected if managers are not seen to apply the same rules and considerations to each case. It is important that managers deal with situations consistently, while balancing the need to consider each case on its individual merits. Rarely are two cases exactly the same, and two identical acts of misconduct may have different implications depending on the nature of the work, the seniority of the post and the circumstances in which the act occurred. In general, any decision to discipline an employee must be reasonable in the circumstances.
  - Promptness – dealing with problems at an early stage is an effective way of reducing the risk of the matter escalating. In all cases, any potential disciplinary matter should be dealt with as quickly as possible and should not unreasonably delay meetings, decisions or confirmation of those decisions whilst still ensuring employees have reasonable notice of any disciplinary meetings.
  - Representation – Staff have the right to be accompanied by a colleague or staff representative where they are required or invited to attend investigation meetings or disciplinary hearings. Although there is no specific right to be accompanied by a relative, it

should be recognised that in some circumstances this may be appropriate. In all cases employees must be advised in writing of their right to representation. If the employee involved in the disciplinary issue is a Union Representative, the matter should be discussed with Human Resources and a Full-Time Official of appropriate union before the employee is interviewed.

## **4. Initial Stages**

- 4.1** This Policy and Procedure is designed for all managers who have responsibility for managing CHS employees. In order to ensure consistency and fairness throughout, it is necessary to follow the Disciplinary Policy and Procedure in all disciplinary cases. Failure to follow these procedures may result in an inability to impose a sanction, to an appeal overturning a decision reached at a hearing, or the loss of a case at Employment Tribunal.
- 4.2** Any issues in connection with capability or competence are more appropriately dealt with under the CHS' Capability Procedure.
- 4.3** In all cases you should discuss the issue with the Human Resources team who can provide advice, guidance and support. Assistance is available from Human Resources at all stages of this procedure which is shown as a flow chart at Appendix B.

### **4.4 Employees Absent on Sick Leave**

Where the employee concerned is absent on sick leave at any point during the investigation, hearing or appeal stages, it may be appropriate to refer the employee to Occupational Health for advice on their fitness to proceed with the process. This ensures that attendance at a meeting will not aggravate the medical condition in any way. In the event that the employee does not wish to attend or is unfit to attend, the meeting can be postponed or alternatively a written statement or a representative to act on the employee's behalf may be considered as a way forward. Where reasonable attempts to progress the matter fail, CHS has the right to proceed in the absence of the employee. Before proceeding on this basis advice should be sought from the Human Resources Team.

### **4.5 Suspension**

Where the allegation is particularly serious or where the continued presence of the employee in the workplace would be detrimental to the individual, colleagues or clients, or to the investigation itself, it may be necessary to suspend the employee. Suspension should only be used following advice from Human Resources, and only in cases which may be regarded as gross misconduct. It should only be considered where it is not possible to allow the employee to continue to work in their normal workplace and it is not appropriate to seek temporary redeployment elsewhere until the conclusion of the investigation.

Suspension is on full pay, which means normal pay including allowances continue to be paid. It should be emphasised that suspension is not a disciplinary sanction and as such there is no right of appeal.

The employee should be asked by the appropriate senior manager to attend a suspension meeting. The employee should be advised of the reason for the meeting, that is, the potential disciplinary allegations against them are being treated as gross misconduct, and that

suspension is considered necessary. The manager should explain that a full investigation will be carried out and that due to the nature of the allegations it is necessary to suspend with pay during that process. The manager should not enter into any further discussion about the allegations or the employee's response to them at the suspension meeting. If possible, an indication of the likely duration of the suspension should be provided. Where appropriate, any keys, identity cards etc should be collected from the employee and the individual is required to leave the premises immediately. The details of the suspension meeting must then be confirmed in writing to the employee within 5 working days.

Where practical, a liaison person should be appointed to act as the suspended employee's point of contact during the period of suspension.

#### **4.6 Police Investigations and Criminal Convictions**

In cases where the employee may be involved in a potentially criminal situation, it may be appropriate to contact the police. For further information and advice, managers should contact HR in the first instance.

Any employee convicted of a criminal offence which may impact on their ability to fulfil the terms of their contract must advise their line manager as soon as possible. Managers should seek advice from HR in such circumstances.

In some cases the nature of an offence may mean it is appropriate to refer an employee to the Disqualified from Working with Children and/or Vulnerable Adult lists via Disclosure Scotland, or to the relevant professional body. Managers should seek advice from HR in such cases.

#### **4.7 Fraud and Financial Irregularities**

In cases of alleged fraud or suspected financial irregularities, the Finance and HR Managers should be consulted prior to any contact with the employee concerned.

#### **4.8 Misconduct and Gross Misconduct**

There are types of misconduct which will normally result in disciplinary action short of dismissal being taken in the first instance. The disciplinary action may take the form of a written warning or final written warning. The action taken will depend on the seriousness of the misconduct, the employee's current disciplinary record and any other relevant factors. A list of types of misconduct normally resulting in action short of dismissal is attached at Appendix A.

Gross misconduct is defined as conduct so serious that it may result in dismissal. A list of types of misconduct which may result in dismissal is also attached at Appendix A.

#### **4.9 Roles and Responsibilities**

A disciplinary matter related to allegations of misconduct will normally be investigated by an appropriate manager determined by a Director or the Chief Executive, supported by Human Resources. Any subsequent disciplinary hearing will normally be chaired by a Director or independent Manager supported by Human Resources.

In cases of gross misconduct, the matter will normally be investigated by a Director, and any subsequent disciplinary hearing will be chaired by another Director or independent manager.

In all cases, managers must consult the Human Resources for advice before any action is taken.

#### 4.10 Trade Union Officials

Whilst normal disciplinary standards apply to the conduct of trade union representatives/officials, any matter involving a trade union representative must be discussed with a Full-Time Trade Union Official prior to the disciplinary procedures being invoked.

## 5. Principles

- 5.1 The first stage of all disciplinary procedures normally occurs when a matter of concern is brought to the attention of a line manager. The line manager, with advice from the HR, will determine whether an investigation is appropriate. If so, two investigating officers will be appointed to begin a formal investigation as soon as possible: generally, the Line Manager/Director/Independent Manager will be responsible for conducting the investigation, together with an HR Representative or another independent manager. In cases of gross misconduct normally the Director would conduct the investigation with a representative from Human Resources or another manager. (See para 4.9). To ensure objectivity, the manager should not be closely associated with the issue prior to carrying out the investigation. Where the manager has previous involvement, another manager should carry out the investigation. The importance of a thorough investigation in disciplinary matters cannot be over-emphasised as a failure to carry out a full investigation could lead to an unfair dismissal.
- 5.2 In all cases the relevant facts should be gathered as early as possible, including any relevant documentation and, where appropriate, statements from all parties involved. This process should be carried out as quickly and confidentially as circumstances permit. On completion of the investigation, the manager will produce a written investigation report outlining the facts, supporting evidence, mitigating circumstances and the recommendations. This will be presented to the disciplinary hearing, if a hearing is appropriate.
- 5.3 The following options may be considered as possible outcomes of the investigation:
  - **No further action** – there may be no case to answer, or the matter may be so trivial that it is better to deal with it informally. In such cases, the line manager may need to reinforce standards and expectations of conduct.
  - **Counselling** – this is a more informal approach to address less serious disciplinary matters, involving a discussion between the employee and their line manager aimed at achieving an improvement in performance, standards or conduct. Managers should keep a record of discussions held and standards and timescales agreed in the employee's personal file. Managers should also provide the employee with a written copy of the outcome of the counselling meeting.
  - **Mediation** – This is a process of bringing together two or more parties, facilitated by a trained mediator, to air their differences in a constructive manner. The aim would be to facilitate an informal settlement of the issues raised without the need for formal disciplinary

action. Trained mediators are available to CHS and arrangements for mediation can be progressed through the HR Support Services.

- **Arrange a disciplinary hearing** – following the investigation the manager may conclude that a formal disciplinary hearing is the appropriate way to address the matter. See para 6.1 for details on arranging a hearing.

In all cases, following investigation the manager should advise the employee, together with any other parties involved in the investigation, what the next stage will be.

- 5.4** Human Resources will be available to provide advice at all stages of the disciplinary process, including the investigation. Full information on conducting an investigation can be found in the Manager's Guide to Conducting an Investigation document.

## 6. Definitions

### 6.1 Arranging a Hearing

A disciplinary hearing must not be convened until the circumstances of the case have been fully investigated, and the investigation report and recommendations presented to the Line Manager/Director, who will then decide in consultation with a HR Support Services whether a disciplinary hearing is required.

If a disciplinary hearing is considered necessary, the employee concerned must be given at least five working days notice in writing of:

- the hearing and that it will be a formal disciplinary hearing;
- the time, date and venue;
- the nature of the allegations with specific details
- the potential outcomes ie whether the matter is considered misconduct or gross misconduct, and whether dismissal is a possibility;
- that witnesses may be present to give evidence;
- who will be present, including the names of any witnesses;
- the right to call witnesses or submit statement or other documents in response to the allegations;
- the right to be accompanied/represented at the hearing.

Where possible, all papers that will be considered at the hearing should be submitted by both parties in advance of the hearing.

It is recommended that the hearing is arranged as soon as possible after the conclusion of the investigation and within two weeks. Where delays do occur, the employee should be kept advised. An employee can request a delay in arranging the hearing and where reasonable this will be supported e.g. to secure a representative or time required to prepare their case.

The chairperson of the disciplinary hearing is responsible for writing to the employee and arranging a suitable venue. Separate rooms should also be available for the employee and management representatives in case of an adjournment. The manager presenting the case and the employee being called to the hearing are responsible for contacting any witness they may wish to call during the hearing. Where witnesses are employees of CHS they will be

granted time off with pay to attend, but must advise their line manager in advance. The chairperson should also arrange for HR to be in attendance.

## **6.2 Format of the Hearing**

The chairperson of the hearing should introduce all parties, explaining everyone's role. If the employee does not have a representative present, ensure they are aware of the right to representation. If they choose not to have representation, the hearing can proceed. If the employee advises that they would like a representative present, the hearing should be adjourned and the employee given the opportunity to make arrangements. Ideally the hearing should be reconvened within 5 days.

The management representative attending the hearing to present the case will normally be the manager who led the investigation.

Once the hearing proceeds, the format should be explained along with the allegations against the employee. The employee should be asked at this stage if they accept the allegation(s). If the employee accepts the allegation(s) in full, the Chairperson should ask for any explanation and/or details of any mitigating circumstances. It may be helpful, depending on the circumstances, for the management representative to provide an outline of the case for information at this stage. It may be appropriate to then adjourn the hearing to allow a decision to be reached on what action, if any, is appropriate.

If the employee does not accept the allegation(s), the full hearing procedure should be followed. The format of the hearing is as follows:

- Management representative presents the case, including calling witnesses or presenting witness statements if appropriate. The employee or representative may then ask questions, and the Chairperson and HR Representative may ask questions.
- Employee or representative presents their response, including witnesses or statements as appropriate. The management representative, Chairperson and HR Representative may then ask questions.
- Management representative provides a summary of their case.
- Employee or representative provides a summary of their response.
- Hearing is adjourned, Management representative, employee and representative leave the room.
- Chairperson considers the decision with HR Representative.
- If any new facts emerge during the hearing, the Chairperson may stop the hearing and request further investigation if this is required.
- All parties are asked to return and the decision is given, providing an explanation of why the decision has been reached. Where a warning has been given, the employee should be advised how long this will remain on their record, and of the right of appeal. In some cases the decision may not be reached straight away, and this should be explained to the employee, advising when it will be provided.
- In all cases the decision should be provided in writing within 5 working days, together with confirmation of the right of appeal and the process to be followed.

## **6.3 Disciplinary Outcomes**

The purpose of the hearing is to determine if a disciplinary case exists, and if it does, what action if any is appropriate. The possible outcomes are as follows:



- no further action
- non-disciplinary action such as counselling, training or other support
- written warning – for less serious misconduct or where informal counselling has failed to achieve required improvement in behaviour
- final written warning – for more serious misconduct or where further misconduct occurs whilst a written warning is still current
- action short of dismissal – an alternative to dismissal such as demotion or transfer, such as in cases of harassment. The employee may be compulsorily transferred to another post without protection of pay. This will be applied with a final written warning.
- dismissal with notice – where further misconduct occurs whilst a final warning is still current ie an accumulation of warnings
- summary dismissal – where gross misconduct is established.

Disciplinary action is cumulative. Where an employee currently has a live disciplinary warning on their record, this should be used to determine any future action. For example, if an employee has a current written warning, any further act of misconduct will normally result in a final written warning.

A warning may be issued at any level depending on the seriousness of the issue, not necessarily starting at a written warning. The action taken will depend on the seriousness of the misconduct, the employee's current disciplinary record and any other relevant factors.

The following points should be considered before deciding on the appropriate level of disciplinary action:

- The seriousness of the incident
- The disciplinary action applied in similar cases
- The employee's current disciplinary record and length of service
- Any mitigating circumstances
- Relevant advice from HR on employment law and case law.

#### **6.4 Drug or Alcohol Addiction**

An employee may provide mitigating circumstances relating to a drug or alcohol problem. In such cases the hearing should be adjourned to allow for advice from HR and, where appropriate, Occupational Health. Normally support would be provided to the employee and any decision in reference to disciplinary action would remain pending should there be any lapse in the agreement around support.

#### **6.5 Duration of Warnings and Retention on Personal File**

Warnings will remain current and be admissible against further misconduct as follows:

Written Warning: 6 months

Final Written Warning: 12 months

Warnings cease to be "live" following the specified period of satisfactory conduct, and should therefore be disregarded for future disciplinary purposes. In certain circumstances an employee's expired disciplinary record may be taken into account. This may be the case where an employee's conduct is satisfactory for the period that the warning is in force but becomes

unsatisfactory thereafter. Where a pattern of behaviour emerges, the expired disciplinary record can be considered in deciding on a future warning.

All reference to any disciplinary record will be removed from the employee's personal file after the warning lapses.

## **6.6 Dismissing an Employee**

Under this procedure, an employee should normally be given a final written warning before dismissal is considered. However, there may be cases of gross misconduct so serious that dismissal without previous warning is appropriate. Acts which constitute gross misconduct are those resulting in a serious breach of contractual terms where CHS is unable to tolerate the continued employment of the individual. Examples of gross misconduct are outlined in Appendix A.

When the decision is taken to dismiss, this must be clearly stated on the disciplinary letter along with the date on which the dismissal is effective. The employee must also be advised whether this is a summary dismissal (which means without notice or payment in lieu of notice, as a result of the seriousness of the misconduct), or due to an accumulation of previous warnings. An employee dismissed due to an accumulation of previous warnings will be entitled to payment in lieu of notice and payment in lieu of outstanding annual leave.

## **6.7 Notifying the Employee of the Outcome**

The employee must be notified in writing of the outcome of the disciplinary hearing within 5 working days of the hearing. The letter must cover the following areas:

- Date of the disciplinary hearing and who was present
- The precise allegations against the employee
- The summary of the case for and against the employee
- The findings of the hearing
- The level of the warning ie written or final written, and how long it will remain live on the employee's record
- Any previous disciplinary warnings which are currently live that have been used in making the decision
- What improvement is expected and the timescales for this
- What future disciplinary steps may be taken if further disciplinary action is required during the period of the current warning
- The employee's right to appeal, to whom and the timescales.

A copy of this letter must be retained in the employee's personal file.

# **7. Appeals**

## **7.1 Right of Appeal**

Every employee has the right to appeal against disciplinary action, and must be advised of this in writing following the disciplinary hearing. Appeals must be made in writing to the Human Resources Team within 10 working days of receipt of the written decision of the hearing.

Appeals should outline the grounds for the appeal. Appeals made outwith the timescale will not normally be considered.

## **7.2 Levels of Appeal**

Appeals against written or final written warnings will be heard by a Director with no previous involvement in the case. Appeals will normally be heard within 20 working days of submission of the appeal. The employee has no further right of appeal beyond this hearing.

Appeals against dismissal will be heard by a Director with no previous involvement in the case or by the Chief Executive/National Convener. Appeals will normally be heard within 20 working days of submission of the appeal. The employee has no further internal right of appeal beyond this hearing.

## **7.3 Arranging an Appeal**

The Chairperson of the appeal hearing is responsible for writing to the employee and arranging a suitable venue. Separate rooms should also be available for the employee and management representatives in case of an adjournment. As with the hearing, the employee and management representatives are responsible for contacting any witness they may wish to call during the appeal. The chairperson should also contact HR to arrange for an HR representative to be in attendance.

The Chairperson of the disciplinary hearing (who made the original decision) and the employee who has raised the appeal must be advised of the arrangements at least 5 days in advance of the appeal hearing. The employee must also be advised of their right to representation at the appeal hearing.

## **7.4 Format of the Appeal Hearing**

The chairperson of the appeal should introduce all parties and explain their roles. Generally the management representative attending the appeal will be the chairperson of the original hearing. The format of the appeal hearing is as follows:

- Employee or representative presents their appeal, including calling witnesses or presenting witness statements if appropriate. The management representative may then ask questions, and the Chairperson and HR representative may ask questions.
- Management representative presents their information, including witnesses or statements as appropriate. The employee or their representative, Chairperson and HR representative may then ask questions.
- Employee or representative provides a summary of their appeal.
- Management representative provides a summary of the case.
- Hearing is adjourned, Management, employee and representative leave the room.
- Chairperson considers the decision with HR representative.
- All parties are asked to return and the decision together with a brief explanation is given.

The appeal hearing is not a re-run of the original hearing. It is simply an opportunity for the employee to question the fairness of the decision, the level of warning applied, or the facts the decision was based on. The basis for the appeal hearing is the employee outlining the reasons why they are appealing.

Ideally there should be no new facts introduced at the appeal, but it may be necessary to consider new information presented in the interests of fairness. However, the employee should be asked to explain why these new facts were not presented at the original hearing.

## **7.5 Outcome of the Appeal**

The chairperson will consider the facts of the appeal, taking advice from HR as required. The decision will be one of the following:

- Uphold the employee's appeal
- Uphold the employee's appeal in part
- Not to uphold the employee's appeal – reject the appeal.

If the chairperson is unable to make a decision at the time of the appeal hearing, the decision may be postponed for further advice and consideration.

## **7.6 Notifying the Employee of the Appeal Outcome**

The appeal chairperson is responsible for confirming the decision in writing to the employee within 5 working days of the appeal hearing. The letter should include:

- The date of the appeal hearing
- Who was present
- The reason the appeal was raised by the employee
- The decision, upholding or not upholding the appeal
- The future action which will be taken as a result of the decision, e.g. remove a warning from the employee's record, re-instatement, confirmation of the warning which applies and how long it will be live, etc.

A copy of the letter must be held on the employee's personal file.

# **8. Senior Management team**

**8.1** Where disciplinary allegations are made about the Chief Executive, the matter will be referred in the first instance to the Chair of the Board who will undertake the investigation or make appropriate arrangements for an investigation to be carried out.

**8.2** In the event of a formal disciplinary hearing involving the Chief Executive the hearing will be chaired by the Chair or members of the Audit Committee. Any subsequent appeal should be made directly to the Scottish Ministers as per Schedule 1, Paragraph 8(8) of the Children's Hearings (Scotland) Act 2011.

# **9. Review**

**9.1** This policy will be reviewed by the Director of Finance & Corporate Services regularly to ensure continued compliance with legislation and best practice. CHS or appropriate staff representatives may propose amendments at any time by writing to the Director of Finance & Corporate Services.

