

POLICE AND CRIME COMMISSIONER FOR DERBYSHIRE



POLICE AND CRIME COMMISSIONER STAFF DISCIPLINARY PROCEDURE

This guidance is suitable for Public Disclosure

February 2013

POLICE AND CRIME COMMISSIONER STAFF DISCIPLINARY PROCEDURE (‘The Procedure’)

1. STANDARDS, PURPOSE AND SCOPE

- 1.1 All staff (employees) of the Office of the Police and Crime Commissioner (OPCC) are required to meet standards of conduct, attendance and job performance. In applying these standards there will be regard to the requirements for reasonableness and equity in each case. The Procedure is designed to help and encourage all staff to achieve these standards and ensure consistent and fair treatment.
- 1.2 It is recognised that discipline is essential for the proper conduct of the organisations affairs in terms of its obligations to the public it serves and for the safety and well being of its Staff.
- 1.3 The Procedure sets out the disciplinary framework, and the ‘Standards of Professional Behaviour’ (Appendix One), determined by the Police Staff Council which will apply to PCC Staff. The Procedure may be implemented at any stage if the employee's alleged misconduct or gross misconduct warrants such action.
- 1.4 The Procedure in respect of employment terminating will not apply or will be superseded by an alternative policy or procedure as indicated:-
 - (a) as a consequence of redundancy; (see Reorganisation, Redeployment and Redundancy Policy)
 - (b) when employees are dismissed on the basis of unsuitability for confirmation of employment at the end of the probationary period; (see Police Staff Probationary Procedure)
 - (c) when employees are considered medically unfit; (see the Attendance Management Policy / Unsatisfactory Attendance Procedures)
 - (d) when employees are deemed not to be performing their role to a satisfactory standard; (see the Unsatisfactory Performance Procedures)
 - (e) through retirement
 - (f) the expiry or non-renewal of a fixed term contract
- 1.5 Staff who are contracted as Home Workers are subject to the disciplinary procedure but there will be matters that are specifically relevant to this group of staff.
- 1.6 The Procedure applies to formal disciplinary action. In some cases, managers will consider counselling and/or training and development measures, which may be more appropriate as a means of addressing performance which is below standard or for minor matters of unsatisfactory conduct. In this respect, the Performance Development Review (PDR) should be utilised. Should these informal measures not resolve the problem it may be necessary for more formal action to be invoked.

Managers should ensure that standards of work and behaviour are clearly communicated to staff.

- 1.7 Records will be kept detailing the nature of any breach of disciplinary rules or unsatisfactory performance, the employee's mitigation, the action taken and the reasons for it, whether an appeal was lodged, its outcome and any subsequent developments. These records will be retained on the employee's personal file in accordance with The Procedure and subject to any statutory requirements, such as the Data Protection Act 1998.
- 1.8 Any complaint from a member of the public against a staff member of the OPCC will be investigated in accordance with this procedure and an Investigating Officer appointed.
- 1.9 At the end of such an investigation, the Investigating Officer will inform the member of the public making the complaint of the conclusions from the investigation. The member of the public may be informed that:-
 - (a) There is not enough evidence to uphold their complaint. In such circumstances, no formal disciplinary action would be taken against the employee subject of the complaint
 - (b) The Police and Crime Commissioner (Commissioner) has decided to improve or amend the procedures in response to the complaint. In such circumstances, no formal disciplinary action would be taken against the employee subject of the complaint
 - (c) The Commissioner intends to take formal disciplinary or other management action against a member of staff. In such circumstances, either disciplinary action in accordance with procedure would be taken against the employee subject of the complaint, or advice may be given including the development of an action plan in accordance with the procedures governing the PDR
 - (d) The complaint may be referred to the Crown Prosecution Service for advice on criminal prosecution. In such circumstances, disciplinary action in accordance with this procedure may still be taken against the employee without waiting for the outcome of any criminal investigation
- 1.10 When arranging disciplinary hearings and providing notice of such, special arrangements may have to be made where employees work in isolated locations or on shifts extending beyond the normal working day.
- 1.11 Whilst the presumption will be that any warning or dismissal issued in accordance with this procedure will be confidential, disclosure may be necessary in accordance with the policies of the OPCC, statutory or court requirements.

2. **PRINCIPLES**

- 2.1 No disciplinary action will be taken against an employee until the case has been investigated and all relevant facts have been considered.
- 2.2 An Investigating Officer will be appointed by the Chief Executive or Commissioner to conduct the investigation.

- 2.3 Suspension from duty on full pay or transfer to another role may be considered as a precautionary measure during the investigation. (see Section 9).
- 2.4 The investigation should aim to be completed at the earliest opportunity. The investigation where appropriate should be completed within 90 days and be subject to regular reviews.
- 2.5 In the event of a perceived breach of the Standards of Professional Behaviour in a discreet or specialist area such as a breach of confidence, data protection, computer misuse or security, the advice of a specialist in that area such as the Force Data Protection Officer and Force Security Manager will be sought at the earliest opportunity. This is to ensure that appropriate advice is provided regarding any on-going vulnerability, the nature and seriousness of the breach and to consider if any criminal investigation is necessary.
- 2.6 The investigator will give the member of staff a 'written notice' informing them of the investigation. This will be supplied at the earliest opportunity and no later than 4 weeks, except in exceptional circumstances such as where disclosure may prejudice an on-going criminal investigation.
- (a) Within 10 working days of receipt of the 'written notice' (unless the period is extended by the investigator) the staff member (or representative) may provide an explanation or a written report, and or any relevant documents. This will be supplied to the investigator.
- 2.7 At all stages of disciplinary hearings and interviews the employee will have the right to be accompanied by a recognised UNISON representative or work colleague employed by the Commissioner (not acting in a legal capacity). (Appendix 2).
- 2.8 (a) The employee and their representative will be updated every 4 weeks as to the progress of the investigation.
- (b) When an investigator wishes to interview the staff member, they will mutually agree a time and date for the interview. However, the staff member may suggest alternative times and dates, within 5 working days of the original date specified by the investigator. Then the investigator will consider the alternative.
- 2.9 Upon conclusion of the investigation, the investigator will refer their investigation to the Chief Executive/Commissioner who in liaison with a senior HR Manager from the Force will notify the member of staff of the outcome within 15 working days.-
- (a) that no action should be taken
- (b) that the Employee should receive an informal verbal warning
- (c) that the Employee should appear before a disciplinary panel
- (d) that no decision could be reached and the Employee will be informed of the reason for this
- 2.10 When the case is referred to a Discipline Hearing:-
- (a) The staff member will be given a written notice, copies of any statements, the investigators reports and any other relevant documentation

- (b) The staff member may object to any person of whom they are informed is conducting or advising the Discipline Panel. This objection must give in writing with reasons no later than 3 working days after the staff member is notified. Any such objection will be considered

2.11 Within 14 working days of the date on which the documents are supplied to the staff member, they may in writing accept or dispute their conduct along with any mitigating factors.

3. DISCIPLINARY MEASURES AND PROCEDURES

3.1 There are normally four stages to the Disciplinary Procedure. Where disciplinary action is taken it will take one of the following forms:-

- (i) Formal Verbal Warning
- (ii) Written Warning
- (iii) Final Written Warning
- (iv) Dismissal

3.2 Informal Warning

After establishing the facts, there may be no need to implement the formal disciplinary procedure detailed below. However, an Informal Verbal Warning may be given to provide the opportunity for improvement or for a matter to be corrected without the necessity of the formal procedure. If an action plan is implemented as a result of the informal warning, it should be ensured that the member of staff knows what is expected and that reasonable and attainable targets are set.

3.3 A record of the reasons for giving an Informal Warning should be given to the employee in writing and a copy retained on the personal file for a period of normally six months. This may be extended depending upon individual circumstances. The member of staff has the right of appeal against this extension as at Section 11.2. The employee will be asked to sign a copy of the record. Action may also be taken in conjunction with the development of an action plan under the PDR process and in such circumstances a copy of the record should be placed on the PDR file. The Line Manager will provide a copy of the record to the relevant HR Manager to ensure any action plans arising from the Informal Verbal Warning are implemented and reviewed.

If the required improvement(s) is not achieved, further disciplinary action may be taken.

4. STAGE ONE – FORMAL VERBAL WARNING

4.1 Where it is believed that the conduct or performance of an employee does not meet acceptable standards, an Investigating Officer will be appointed in accordance with paragraph 2.2 above. This may not always be required if the evidence has already been collected and the facts of the case are readily available. The employee will be informed in writing that this has been done. The written notice will state the full details of the complaint or disciplinary allegation. This will be issued not less than 5 working days before any investigatory interview.

- 4.2 Arrangements will then be made for the employee to be interviewed, informed of the complaint/allegation and given the opportunity to reply.
- 4.3 Following investigation the employee will receive not less than 5 working days notice of any subsequent disciplinary hearing, and he/she may be accompanied at this hearing by a recognised trade union representative or fellow employee from the OPCC. The disciplinary panel will review the available information and if it is considered to be justified, will either
- (i) inform the employee that a formal verbal warning will be issued; or that
 - (ii) an Informal Verbal Warning will be issued; or
 - (iii) the case against the employee is not proven to the satisfaction of the Panel, in which case the employee will be informed accordingly
- 4.4 If a Formal Verbal Warning is issued this will be confirmed in writing, normally within 5 days of the hearing. The employee will be advised of the reason for the warning, that it is the first stage within the Disciplinary Procedure, and of his/her right to appeal. A record will be made of the Formal Verbal Warning, and the employee will be asked to sign the record. The record will be held on the employee's personal file for a period of 6 months. This may be extended in exceptional circumstances.
- 4.5 The record will record the name of the employee, the fact that it is a Formal Verbal Warning, the nature of the warning, the date of the warning and the date the warning will expire subject to satisfactory conduct and performance. The note will record or refer to the action plan that has been agreed for the employee's PDR. Any action plan will be constructed in accordance with the practices governing the PDR but will identify the improvement(s) required. This period of review will be influenced by work requirements and individual circumstances, and is intended to provide a reasonable time for the improvement to be achieved, sustained and monitored.
- 4.6 An employee who feels that the Formal Verbal Warning is unjustified may appeal within 7 days of receipt of the Formal Warning. If the appeal is upheld and the Formal Verbal Warning is found to be unjustified, then the note on record will be destroyed and the employee informed in writing that no disciplinary action is to be taken. The appeal panel may determine that an informal warning should be issued in accordance with the above process.
- 4.7 At the end of the specified period of review, the Line Manager will, if the required improvement(s) is achieved, inform the employee accordingly. The record of the Formal Verbal Warning will be regarded as spent after six months, but normally no more than twelve months subject to satisfactory conduct and performance (for example, if the employee has been absent for a prolonged period from the workplace and there has not been opportunity to assess improved performance, the warning may be extended). The record of the warning will be removed from the employee's file after it is spent, and the employee informed in writing what this is done.

If the required improvement(s) is not achieved, the following steps may be taken.

5. **STAGE TWO – WRITTEN WARNING**

- 5.1 If the alleged initial offence is a serious one, or if there is no improvement in performance/conduct following a Formal Verbal Warning, an Investigating Officer will be appointed.

- 5.2 The employee will be informed in writing that this has been done. The written notice will state the details of the complaint/disciplinary allegation made.
- 5.3 Arrangements will then be made for the employee to be interviewed, informed of the complaint/allegation and given the opportunity to reply.
- 5.4 The employee will receive not less than 5 working days notice of the disciplinary hearing and he/she may be accompanied at this hearing by a recognised trade union representative, or fellow worker employed by the OPCC. The Panel having reviewed the available information, and if it is considered to be justified, will inform the employee that a First Written Warning will be issued. Alternatively, a decision may be reached that:-
- (i) a Formal Verbal Warning will be issued in accordance with Stage 1 of the procedure; or
 - (ii) an Informal Verbal Warning will be issued; or
 - (iii) the case against the employee is not proven to the satisfaction of the Panel, in which case the employee will be informed accordingly; or
 - (iv) the case may need to be referred to another panel if, during the proceedings, it is identified that the breach is at a more serious level
- 5.5 If a First Written Warning is administered, it will be confirmed in writing, normally within 5 days of the hearing. The employee will be advised of the reason for the warning, that it is the second stage of the Disciplinary Procedure, and of his/her right to appeal. It will warn that action under stage 3 will be considered if there is not satisfactory improvement or if there is any further misconduct or poor performance.
- 5.6 The warning will record the name of the employee, the fact that it is a First Written Warning, the nature of the warning, the date of the warning and the date the warning will expire subject to satisfactory conduct and performance. The note will record or refer to the action plan that has been agreed for the employee's PDR. Any action plan will be constructed in accordance with the practices governing the PDR, but will identify the improvement(s) required. This period of the action plan will be influenced by work requirements and individual circumstances, and is intended to provide a reasonable time for the improvement to be achieved, sustained and monitored. A further long-term plan for PDR may also be implemented.
- 5.7 The employee is required to sign a copy of the written warning to confirm his/her understanding of the terms of the warning.
- 5.8 At the end of the specified period, the Line Manager will, if the required improvement(s) is achieved, inform the employee accordingly. The record of the First Written Warning will normally be regarded as spent after twelve months, subject to satisfactory conduct and performance. The warning may be extended. The record of the warning will be removed from the employee's file after it is spent and the employee informed in writing when this is done.

If the required improvement(s) is not achieved, the following steps may be taken.

6. **STAGE THREE - FINAL WRITTEN WARNING**

- 6.1 If there is still no improvement and conduct or performance is still unsatisfactory, or if the misconduct is sufficiently serious to warrant only one written warning but insufficiently serious to justify dismissal, a Final Written Warning will be considered. An Investigating Officer will be appointed.
- 6.2 The employee will be informed in writing that this has been done. The written notice will state the details of the complaint/disciplinary allegation.
- 6.3 Arrangements will then be made for the employee to be interviewed, informed of the complaint/allegation and given an opportunity to reply.
- 6.4 The employee will receive not less than 5 working days notice of the disciplinary hearing, and he/she may be accompanied at this hearing by a recognised trade union representative or fellow employee from the OPCC. The Panel having reviewed the available information, and if it is considered to be justified, will inform the employee that a Final Written Warning will be issued. Alternatively, a decision may be reached that:-
- (i) the employee will receive an Informal Warning; or
 - (ii) a Formal Verbal Warning should be issued in accordance with stage 1 of the procedure; or
 - (iii) a Formal Written Warning should be issued in accordance with stage 2 of the procedure; or
 - (iv) the case against the employee is not proven to the satisfaction of the Panel, in which case the employee will be informed accordingly; or
 - (v) the case may be referred to a higher panel if a higher penalty is deemed appropriate following the hearing.
- 6.5 If a Final Written Warning is administered, it will be confirmed in writing, normally within 5 days of the hearing. The employee will be advised of the reason for the warning, that it is the third stage of the Disciplinary Procedure, and of his/her right to appeal. It will warn that dismissal will be considered if there is no satisfactory improvement.
- 6.6 The warning will record the name of the employee, the fact that it is a Final Written Warning, the nature of the warning, the date of the warning and the date the warning will expire subject to satisfactory conduct and performance. The note will normally record or refer to the action plan that has been agreed for the employee's PDR. Any action plan will be constructed in accordance with the practices governing the personal development portfolio, but will identify the improvement(s) required. This period will normally be influenced by work requirements and individual circumstances and is intended to provide a reasonable time for the improvement to be achieved, sustained and monitored. A further long-term action plan for PDR may also be implemented.
- 6.7 The employee is required to sign a copy of the written warning to confirm his/her understanding of the terms of the warning.

- 6.8 At the end of the specified period, the supervisor will, if the required improvement(s) is achieved, inform the employee accordingly. The record of the Final Written Warning will normally be regarded as spent after eighteen months, subject to satisfactory conduct and performance (for example, if the employee has been absent for a prolonged period from the workplace and there has not been the opportunity to assess improved performance the warning may be extended). The record of the warning will be removed from the employee's file after it is spent and the employee informed in writing when this is done.

If the required improvement(s) is not achieved, the following steps may be taken.

7. **STAGE FOUR – DISMISSAL**

- 7.1 If there is still no improvement and conduct or performance is still unsatisfactory, such that dismissal will be considered, an investigating officer will be appointed.
- 7.2 The employee will be informed in writing that this has been done. The written notice will state the details of the complaint/disciplinary allegation.
- 7.3 Arrangements will then be made for the employee to be interviewed, informed of the complaint/allegation and given the opportunity to reply.
- 7.4 The employee will receive not less than 5 working days notice of the disciplinary hearing*, and he/she may be accompanied at this hearing by a recognised trade union representative or fellow employee from the OPCC. The Panel having reviewed the available information, and if it is considered to be justified, will inform the employee that they will be dismissed. The following may also be considered:-
- (i) a Formal Verbal Warning issued in accordance with Stage 1 of the procedure; or
 - (ii) a Formal Written Warning issued in accordance with Stage 2 of the procedure; or
 - (iii) a Final Written Warning issued in accordance with Stage 3 of the procedure. This is a separate warning in it's own right and should not be linked with an alternative to dismissal as at section 7.5; or
 - (iv) the case against the employee is not proven to the satisfaction of the Panel, in which case the employee will be informed accordingly.
- 7.5 The disciplinary panel may consider the following alternatives to dismissal, where the circumstances warrant and the opportunity exists. This will be in conjunction with a Final Written Warning.
- (i) transfer to another post/location – consideration will be given to personal circumstances
 - (ii) permanent transfer to a post at a lower salary scale/demotion
 - (iii) Withholding of incremental progression until the Final Written Warning has been expunged. The employee will then progress to the increment on which they would have been on had the progression not been withheld on the first of the month following the expunging of the warning.

Employees with one years' continuous service or more have the right, on request, to a written statement of particulars of reasons for dismissal.

- 7.6 The staff member will be informed of the result of the misconduct hearing and disciplinary action as soon as possible, and in any event will be provided with a written notice with a summary of reasons within 5 working days.
- 7.7 Where appropriate the employee may be given the appropriate pay in lieu of notice and will be asked to leave the premises following the decision.
- 7.8 The employee is required to sign a copy of the dismissal to confirm his/her understanding.
- 7.9 Whilst the presumption will be that the dismissal will be confidential, disclosure may be necessary in accordance with policy, statutory or court requirements.

8. **GROSS MISCONDUCT**

- 8.1 In the event of gross misconduct on the part of an employee being reported, the relevant manager will immediately report the matter to the Chief Executive and/or Commissioner

The employee will be informed in writing that this has been done. The written notice will state the details of the complaint/disciplinary allegation made.

- 8.2 Arrangements will then be made for the employee to be interviewed, informed or the complaint/allegation and given an opportunity to reply.
- 8.3 The employee will receive not less than 5 working days notice of the disciplinary hearing, and he/she may be accompanied at this hearing by a recognised trade union representative or fellow employee from the OPCC. If, on completion of a full investigation and the full Disciplinary Procedure, the panel considers that the act of misconduct irreparably damages the relationship with the employee (i.e. repudiates the contract of employment) so that there ceases to be a position of trust between them, the result will normally be summary dismissal without notice or payment in lieu of notice.

The following may also be considered:-

- (i) a Formal Verbal Warning should be issued in accordance with stage 1 of the procedure; or
 - (ii) a Formal Written Warning should be issued in accordance with stage 2 of the procedure: or
 - (iii) a Final Written Warning should be issued in accordance with stage 3 of the procedure; or
 - (iv) the case against the employee is not proven to the satisfaction of the Panel in which case the employee will be informed accordingly.
- 8.4 The disciplinary panel may consider the following alternatives to dismissal, where the circumstances warrant and the opportunity exists. This will be in conjunction with a Final Written Warning.

- (i) transfer to another post/location – consideration will be given to personal circumstances
- (ii) permanent transfer to a post at a lower salary scale/demotion
- (iii) withholding or incremental progression for a specified period. Incremental progression will then resume as at paragraph 7.5. iii

Employees with one years' continuous service or more have the right, on request, to a written statement of particulars of reasons for dismissal.

- 8.5 On dismissal the employee will be asked to leave the premises following the decision. The decision to dismiss will be confirmed in writing within 5 days of the hearing, that it is the final stage in the Disciplinary Procedure and the employee advised of the right to appeal.
- 8.6 The employee is required to sign a copy of the dismissal to confirm his/her understanding.

9. **SUSPENSION**

- 9.1 Where an employee is suspected of an act of gross misconduct he/she may be suspended from work on full pay, whilst investigation of the alleged offence is conducted. Consideration may also be given to transferring the employee to an alternative role, department or location.
- 9.2 Likewise, suspension may also be considered if there would be a risk to the investigation by the employee remaining at work, or if there has been a potential major breach leading to a breach of trust and confidence or security. The purpose and reason for suspension must be clear.
- 9.3 Suspension can be authorised by the Chief Executive or Commissioner. The purpose of such a period of suspension is to enable a full and fair examination of the facts to proceed and to determine whether any offence has been committed.
- 9.4 During suspension it must be emphasised that the act of suspension is neutral and carries no implication of guilt against the individual concerned. Every endeavour will be made to keep the period of suspension to a minimum.
- 9.5 It is important that the decision to suspend be made quickly and the individual will be instructed not to visit the premises or contact staff whilst on suspension unless required to attend as part of the investigation. The Force Employee Assistance Provider/Occupational Health and UNISON services will continue to be available and access to premises will be granted for staff to avail themselves of these services.
- 9.6 The staff member will be informed in person and in writing that they are suspended and provided with a summary of reasons.
- 9.7 The member of staff (or their representative) may make representations against the initial suspension within 7 working days of being suspended and at any time during the suspension if it is reasonably believed that circumstances relevant to the suspension have changed.

- 9.8 The use of suspension must be reviewed every 4 weeks by the Chief Executive and/or Commissioner (or sooner where facts have become known, which suggest that suspension is no longer appropriate).
- 9.9 Following the suspension review, the staff member will be informed in writing within 3 working days with the result and a summary of reasons.
- 9.10 For additional notes for the guidance of police staff suspended from duty and their managers see appendix 4

10. NORMAL AUTHORITY LEVELS FOR DISCIPLINARY ACTION

TYPE OF ACTION	DISCIPLINARY PANEL
Stage 1 – Formal Verbal Warning	Immediate Line Manager & HR Caseworker
Stage 2 – First Written Warning	Head of Service Area & HR Manager
Stage 3 – Final Written Warning	Chief Executive & Senior HR
Stage 4 – Dismissal/Gross Misconduct	Chief Executive and/or Deputy Commissioner & Senior HR

*The Commissioner will maintain a schedule of delegated authority for all posts. It may be necessary to change the composition of the panel depending upon circumstances.

11. APPEALS

- 11.1 An employee who wishes to appeal against a Verbal to Final Written Warning disciplinary decision should do so in writing to the Chief Executive and in relation to dismissals to the Commissioner within 7 working days of receiving the letter confirming the disciplinary action. All appeal decisions are final.
- 11.2 The employee will be required to identify the criteria for appeal. The reasons for appeal may be for one of the following criteria:-
 - (i) appeal against the facts that the decision was based upon
 - (ii) appeal against the sanction imposed
 - (iii) appeal on procedural grounds.
- 11.3 Appeals will normally be heard within 21 working days of receipt of the appeal with the exception of appeals against dismissal, which will take place within 28 working days of receipt of appeal.
- 11.4 Written submissions outlining the basis of the appeal, together with any documentation to be presented to the appeal hearing, must be submitted to the Chief Executive or Commissioner as the case maybe, at least 7 working days prior to the hearing.
- 11.5 Extensions to the time limits will be through mutual agreement.

- 11.6 (a) Employees have the right to be accompanied at the appeal hearing by UNISON or work colleague employed by the OPCC (not acting in a legal capacity).
- (b) The staff member may object to any person of whom they are notified is conducting or advising the Discipline Panel. Any objection must be given in writing with reasons, no later than 3 working days after the member of staff is informed. Any such objection will be considered.
- 11.7 (a) The appeal panel will reconsider the case on the grounds stated at 11.2 and determine the appropriate penalty. This will be to either confirm or reverse the findings of the original panel, or to reduce the penalty as appropriate. Where an alternate penalty is imposed it will be implemented in accordance with the appropriate stage of the procedure.
- (b) The appeal decision and a written summary of the reasons will be supplied to the staff member within 3 working days of the Appeal.
- 11.8 Where new evidence arises during the appeal from the employee or the employers side, all parties should be provided with the opportunity to comment before any action is taken. It may be appropriate to adjourn the appeal in order to investigate or consider such new evidence. The employee should be informed in writing of the adjournment and the reasons for this.

12. NORMAL AUTHORITY LEVEL FOR APPEAL HEARINGS

TYPE OF ACTION	APPEAL PANEL
Stage 1 – Verbal Warning	Head of Service Area & Independent HR Caseworker
Stage 2 – Written Warning	Chief Executive & Senior HR
Stage 3 – Final Written Warning	Chief Executive or independent senior manager as designated by the Commissioner & senior HR
Stage 4 – Dismissal/Gross Misconduct	Commissioner & Head of HR

It may be necessary to change the composition of the panel depending upon circumstances.

14. TRADE UNION REPRESENTATIVES

- 14.1 Disciplinary action against a Trade Union official can lead to a serious dispute if it is seen as an attack on the Union's function. Although normal disciplinary standards should apply to their conduct as employees, no disciplinary action beyond a verbal warning should be taken until the circumstances of the case have been discussed with a Senior Trade Union Representative or full time official.

Trade Union Disclaimer

Any complaints/allegations regarding Trade Union officials acting in their capacity as an official must be addressed with the Union concerned.

APPENDIX ONE - Standards of Professional Behaviour

Guidance on the Standards of Professional Behaviour

Where these Standards of Professional Behaviour are being applied in any decision or disciplinary process, they shall be applied in a reasonable, transparent, objective and proportionate manner. Due regard shall be paid to the nature and circumstances of the individuals conduct, including whether his or her actions or omissions were reasonable at the time of the conduct under scrutiny.

This guidance gives examples to help staff interpret the standards expected in a consistent way. They are not intended to be an exclusive, prescriptive or exhaustive list.

Where the disciplinary procedure is being used, it is important to identify the actual behaviour that is alleged to have fallen below the standard expected of an individual, with clear particulars and evidence describing that behaviour.

It should be remembered that other procedures exist to deal with poor performance and issues of capability.

Honesty and Integrity

Staff are honest, act with integrity and do not compromise or abuse their position

Authority, Respect and Courtesy

Staff act with self-control and tolerance, treating members of the public and colleagues with respect and courtesy

Staff do not abuse their powers or authority and respect the rights of all individuals

Equality and Diversity

Staff act with fairness and impartiality. They do not discriminate unlawfully or unfairly

Use of Restraint

Staff only use restraint as part of their roles and responsibilities to the extent that it is necessary, proportionate and reasonable in all the circumstances

Instructions

Police staff only give and carry out reasonable instructions

Police staff follow all reasonable instructions and abide by policies of the OPCC

Work and Responsibilities

Staff are diligent in the exercise of their work and responsibilities

Confidentiality

Staff treat information with respect and access or disclose it only in the proper course of their work

Fitness for Work

Staff when at work are fit to carry out their duties

Discreditable Conduct

Staff behave in a manner which does not discredit the police service or undermine public confidence in the police service

Staff report any conviction or caution against them for a criminal offence. In addition any summary infringement of the Road Traffic Act or fixed penalty notice for speeding, which may have an impact on the reputation of the OPCC

Challenging and Reporting Improper Conduct

Staff whilst at work report, challenge or take action against the conduct of colleagues which have fallen below the standards of professional behaviour expected

APPENDIX TWO - The statutory right to be accompanied at disciplinary hearings

What is the right?

Workers have a statutory right to be accompanied by a fellow worker or Trade Union official where they are required or invited by their employer to attend certain disciplinary hearings and when they make a reasonable request to be so accompanied. This right is additional to any contractual rights.

To whom does the right apply?

The statutory right to be accompanied applies to all workers, not just employees working under a contract of employment. 'Worker' is defined in the legislation and includes anyone who performs work personally for someone else, but is not genuinely self-employed. There are no exclusions for part-time, casual workers, or those on short-term contracts. For the purpose of this appendix, reference will be made to the 'Worker' and 'Commissioner'.

Application of the statutory right

The statutory right applies where a worker:-

- (i) Is required or invited to attend a disciplinary hearing, and
- (ii) Reasonably requests to be accompanied at the hearing.

What is a disciplinary hearing?

Whether a worker has a statutory right to be accompanied at a disciplinary hearing will depend on the nature of the hearing. The Commissioner often chooses to deal with disciplinary problems in the first instance by means of an informal interview or counselling session. So long as the informal interview or counselling session does not result in a formal warning or some other action, it would not generally be good practice for the worker to be accompanied, as matters at this informal stage are best resolved directly by the worker and manager concerned. Equally, senior managers or Investigating Officers should not allow an investigation into the facts surrounding a disciplinary case to extend into a disciplinary hearing. If it becomes clear during the course of the informal or investigative interview that formal disciplinary action may be needed, then the interview should be terminated and a formal hearing convened, at which the employee should be afforded the statutory right to be accompanied.

The statutory right to be accompanied applies specifically to hearings, which could result in:-

- (i) The administration of a formal warning to a worker by his or her employer (ie a warning, whether about conduct or capability, that will be placed on the worker's record); or
- (ii) The taking of some other action in respect of a worker by his employer (ie suspension without pay, demotion or dismissal); or
- (iii) The confirmation of a warning issued or some other action taken

What is a reasonable request?

In order for workers to exercise their statutory right to be accompanied they must make a reasonable request to their employer. Workers are free to choose any one fellow worker or Trade Union official (not acting in a legal capacity). However, in making their choice workers should bear in mind that it would not be appropriate to insist on being accompanied by a colleague whose presence would prejudice the hearing, or who might have a conflict of interest. Nor would it be sensible for a worker to request accompaniment by a colleague from a geographically remote location when someone suitably qualified was available on site. The request to be accompanied need not be in writing.

The accompanying person

A worker has a statutory right to be accompanied at a disciplinary by a single companion who is either a:-

- (i) Fellow worker, ie another of the organisations workers; or
- (ii) A full-time official employed by a Trade Union; or a lay union official, so long as they have been reasonably certified in writing by their union as having experience of, or as having received training in, acting as a worker's companion at disciplinary or grievance hearings

Workers are free to choose an official from any Trade Union to accompany them at a disciplinary or grievance hearing regardless of whether the union is recognised or not. However, where a Trade Union is recognised in a workplace, it is good practice for an official from that union to accompany the worker at the hearing.

There is no duty on a fellow worker or Trade Union official to accept a request to accompany a worker and no pressure should be brought to bear on a person if they do not wish to act as a companion.

A worker who has been requested to accompany a colleague employed and has agreed to do so is entitled to take a reasonable amount of paid time off to fulfil this responsibility. The times off will not only cover the hearing, but will also allow a reasonable amount of time off for the accompanying person to familiarise themselves with the case, and confer with the worker before and after the hearing.

A lay Trade Union official is permitted to take a reasonable amount of paid time off to accompany a worker at a hearing so long as the worker is employed by either the Derbyshire Constabulary or the OPCC.

The worker has no right to be accompanied by a lawyer or someone acting in a legal capacity. As the Disciplinary Procedure is an internal process, the presumption will be that it will not accede to a request for the worker to be accompanied by a lawyer or someone acting in a legal capacity.

The statutory right in operation

It is good practice for the organisation to try to agree a mutually convenient date for the disciplinary or grievance hearing with the worker and their companion. This is to ensure that hearings do not have to be delayed or postponed at the last minute. Where the chosen companion cannot attend on the date proposed, the worker can offer an alternative time and date, so long as it is reasonable and falls before the end of the period of five working days, beginning with the first working day after the day proposed by the organisation. In proposing an alternative date the worker should have regard to the availability of the relevant manager or individual(s) presiding over the hearing. For instance, it would not normally be reasonable to ask for a new date for the hearing where it was known the manager/individual was going to be absent on business or on leave, unless it was possible for someone else to act at the hearing. The location and timing of any alternative hearing should be convenient to both worker and employer.

Both the organisation and worker should prepare carefully for the hearing. The organisation should ensure that a suitable venue is available and that, where necessary, arrangements are made to cater for any disability the worker or their companion may have. Where English is not the worker's first language there may also be a need for translation facilities. The worker should think carefully about what is to be said at the hearing, and should discuss with their chosen companion their respective roles at the meeting. Before the hearing, the worker should inform the organisation of the identity of their chosen companion. In certain circumstances, for instance where the chosen companion is an official of a non-recognised Trade Union, it might also be helpful for the organisation and chosen companion to make contact with each other before the hearing.

The chosen companion has a statutory right to address the hearing, but no statutory right to answer questions on the worker's behalf. Companions have an important role to play in supporting the worker, and to this end should be allowed to ask questions and should, with the agreement of the employer, be allowed to participate as fully as possible in the hearing. The companion should also be permitted reasonable time to confer with the worker, either in the hearing room, or outside.

The organisation must be careful not to place any worker at disadvantage for exercising or seeking to exercise their right to be accompanied. Equally, the organisation must not place at a disadvantage those who act or seek to act as the accompanying person.

APPENDIX THREE – Relationship with the dispute resolution process

- (i) There may be occasions where an issue that initially appears to be suitable for the Dispute Resolution Procedure leads to an emergence of potential disciplinary issues. In such cases, the Stage Manager will consult the relevant HR Manager.
- (ii) Except in cases of gross misconduct, which will be dealt with immediately under this procedure, the disciplinary procedure will not commence until the dispute resolution process has been resolved. This could result in a delay in any disciplinary procedure for a maximum of six weeks. Following resolution of the dispute resolution process, it may be necessary to appoint an Investigating Officer, and for disciplinary action to be taken in accordance with this procedure
- (iii) It is acknowledged that an aggrieved member of staff under the dispute resolution process may not wish to make disciplinary allegations against another member of staff. However, whilst their views will be taken into consideration, there may be circumstances where the disciplinary process may need to be instigated. Such occasions will be where the allegation is serious, or there are compelling issues of public or organisational interest or the matter has worsened since the original grievance was made.

APPENDIX FOUR - Notes for the guidance of staff suspended from duty

General

The following notes have been compiled to assist employees suspended from duty and to remind them of their entitlements, conditions and responsibilities whilst suspended. Suspension will be immediate following the service of the Notice. It must be emphasised that the act of suspension is neutral and should not be regarded as a presumption of guilt.

Pay and Allowances

Police Staff suspended from duty will receive full basic pay. This will exclude shift allowances, standby etc unless consolidated as part of pay. Other allowances will be suspended.

Staff who are absent from duty (other than by reason of sickness below or because of other authorised absences) and whose whereabouts are unknown or who are in custody in pursuance of a court sentence or between conviction by a court and sentence, are not entitled to pay.

Annual Leave

Where suspended, staff will be expected to be able to return to work immediately. If the suspension is lifted, or it is necessary to interview or question them about any matters in relation to the disciplinary investigation staff will need to be available.

If a member of police staff wishes to take a holiday or otherwise wishes to be unavailable they should take annual leave in relation to this period. Requests will go to the Line Manger who should consult with the Investigating Officer if one has been appointed

Sickness

Employees should report their sickness in compliance with policy as if on normal duty. Advice on sickness benefits and certification can be obtained from HR Service Centre.

Status

Suspended employees are not empowered to carry out the duties of their post.

Other Employment

Employees are not permitted to take other employment whilst suspended from duty without the consent of the Commissioner.

Employee Assistance Provider/ Occupational Health

All facilities remain available to suspended staff.

Nominated Contact

A member of staff will be nominated by the Commissioner to maintain contact with you for welfare, personal or other reasons, which may be necessary in any particular case. The nominated member of staff in this case is:-

Name Position.....

Recall to Duty

The Staff member may be recalled to duty whilst under suspension, for instance to give evidence at Court or for interview regarding the matter for which he/she was suspended, or for any other reason. Expenses will be met as if the staff member was not suspended.

Personal Issue Equipment

The identity card, standard keys and any official authorities issued to staff will be withdrawn on his/her suspension.

Visits to Police Premises

A suspended staff member will not be allowed to enter the offices of the Commissioner or police premises unless so instructed by a senior member of staff, in which case he/she will report on arrival to the senior member in charge.

UNISON

The suspended staff member will be permitted unrestricted access to UNISON representatives.

Further Information

These notes are not intended to be comprehensive and do not cover every eventuality. Suspended staff members may contact the Professional Standards Department, the Person in charge of their procedure, the Investigating Officer and Line Manager, directly or via their Union representative.

Reinstatement to Duty

You will remain suspended until you are notified otherwise. This will normally occur when either a decision is made to reinstate or it has been decided you will not be charged with a disciplinary offence or you have been dealt with upon a disciplinary charge(s) (dependent upon the Appeals process).

I acknowledge receipt of a copy of this document.

Signed

Name

Position

Date

Notes of Guidance for Managers of Police Staff Suspended From Duty

1. Where practicable, prior to suspension, the following should be informed to ensure advice, guidance and support is available to the suspended employee:-
 - UNISON (if employee is a member) or relevant Trade Union.
 - Senior Manager.
2. A copy of the letter of suspension should be endorsed by the server and signed on receipt by the staff member.
3. The name of a contact should be given to the staff member and notes of guidance issued.
4. Supervisors should ensure that any outstanding work is catered for and that the staff member is aware that his/her work will be actioned.
5. The staff members' identity card, name badge, standard keys, any authorities should be withdrawn on suspension.
6. A suspended staff member will not be allowed to enter the offices of the Police and Crime Commissioner or police premises unless the appointment is approved by the appropriate line manager. The staff member will have access to his/her UNISON representative and the Employee Assistance Provider. Should the employee visit police premises for the above purposes he/she should report to the line manager.
7. Advice should be given to the suspended employee regarding avoiding contact with co-workers who may be witness to the alleged breach of discipline.
8. There are no restrictions on visiting the suspended staff member but supervisors should be aware of any difficulties for those who are witnesses. Witnesses should seek advice from their supervisors prior to visiting.
9. The need for continued suspension will be regularly reviewed and the individual kept informed of the situation by the line manager.
10. Memoranda relating to the suspension will be forwarded to:-
 - HR Service Centre,
 - Criminal Justice (in criminal matters),
 - UNISON,
 - Information Services
11. On reinstatement the notice of withdrawal of suspension will be issued and identity cards, keys, etc, will be returned. Written notification will be as above

APPENDIX FIVE – Examples of Gross Misconduct

(This list is not exhaustive)

- (i) Serious or wilful refusal to undertake tasks relevant to the post or to obey reasonable instructions
- (ii) Fighting or assault on another person whilst on duty
- (iii) Serious misconduct at work which would bring disrepute to either the employee's position, or the organisation
- (iv) Deliberate damage to property owned by the organisation or that of other employees
- (v) Serious incapability through alcohol or being under the influence of illegal drugs whilst on duty
- (vi) Serious misuse of Force and/or OPCC information systems and/or unauthorised access and/or use of computer records, fraud and deliberate falsification of records. Advice from the Force Security Officer and Data Protection Officer should always be sought and details reported to the Data Protection Officer
- (vii) Breach of duty or trust regarding disclosure of confidential information (subject to the Public Interest (Disclosure) Act 1998)
- (viii) Discrimination, harassment or victimisation on the grounds of race, sex, disability, sexuality or religion or in any other circumstances likely to bring disrepute to either the employee's position or the organisation
- (ix) Serious infringement of safety rules
- (x) Failure to disclose unspent criminal convictions or in respect of a post exempt from the provision of Rehabilitation of Offenders Act 1975, any convictions whether spent or not (including failure to notify Supervisor/Manager of any charges, actual or pending)
- (xi) Theft from the organisation and/or other employees/office holders/members of the public
- (xii) Major breach of documented policies and procedures
- (xiii) Falsely claiming to hold academic and or professional qualifications or experience required for safe and effective performance within the role

Home Workers – Examples of Gross Misconduct

(This list is not exhaustive)

- (i) Falsification of records
- (ii) Use of the property of the organisation and time for purposes other than those of the organisation
- (iii) Failure to attend premises when required to do so

Examples of Gross Misconduct – When away from the work place

The off duty conduct of an employee may have an unfavourable impact on the organisation. Such conduct will be the concern of the organisation and may be subject to disciplinary action (including gross misconduct) where:-

- (i) It is relevant to the position of trust and/or the nature of the specific post that the employee holds within the organisation
- (ii) It affects the integrity of the employee in a way that is prejudicial to their carrying out the duties associated with that specific position
- (iii) It affects the working relationship with other staff or the public
- (iv) It affects the employee's continued ability to practice his/her profession

All employees must not subordinate their duty to their private interests or put themselves in a position where duty and private interests conflict.