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Disciplinary Policy

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1. Introduction

The Disciplinary Policy applies to all staff and is in accordance with all legal requirements and ACAS guidance. The policy aims to encourage employees to achieve and maintain the required standards of conduct, performance and attendance. It ensures fairness and consistency in the treatment of individuals. In cases where an employee fails to attain the required standard the disciplinary policy will be instigated and this may result in disciplinary action.

This policy applies to all employees of the CCG.

Other workers will be subject to the procedures laid out in any written agreement that exists between the CCG and / or the worker and/or the agency through which they work. This procedure will not apply to agency workers and independent contractors, including Bank workers.

2. Principles

The general principles of this policy are:

- to encourage all staff to achieve and maintain standards of conduct
- to encourage managers to manage their staff appropriately, avoiding the need to take formal action where appropriate
- to ensure appropriate investigation to establish the circumstances
- to treat staff fairly
- to ensure compliance with the CCG's Equality & Diversity Policy and Bullying & Harassment Policy.
- to take appropriate action, which is reasonable in all the circumstances

Alleged breaches of conduct, performance or attendance will be fully investigated before any disciplinary action is taken and wherever possible, the manager will attempt to resolve the matter through informal discussion with the employee.

All cases of suspected fraud within the CCG must initially be referred to the Director of Finance and Local Counter Fraud Specialist prior to a full investigation being initiated as required under the Standing Financial Instructions. This is to assess the case and exercise discretion as to the need to involve others or whether to allow the matter to be dealt with internally. If the latter is preferred, the following procedure will apply (Please refer to the Bribery, Fraud, Corruption and Raising a Concern policy).

No disciplinary action will be taken against a trade union representative without firstly discussing with the relevant full time officer.

Employees will be informed in writing of the issues causing concern and will be given the opportunity to present their views before any decision is made at a disciplinary hearing.

Employees are entitled to be accompanied at all formal meetings by a Trade Union Representative or CCG work colleague.

The employee may not insist on being accompanied by a colleague whose presence would prejudice the meeting or who might have a conflict of interest. It would also be unreasonable for an employee to ask to be accompanied by a colleague from a remote location when someone suitably qualified was available on site. Should there be any dispute regarding the chosen companion that cannot be resolved, the matter will be escalated to a senior member of the HR team.

Employees are required to attend all meetings relating to the disciplinary process. If they, or their companion, are unable to attend the arranged meeting, they must give notice and reasons why they are unable to attend. The meeting will then be rescheduled to a mutually convenient time, within 10 working days of the original date wherever possible. However, where an employee fails to attend such meetings without reasonable grounds, then the meeting may be held in their absence. The employee will be informed of this in writing.

If an employee has a valid objection to the person appointed to undertake the investigation or to hear the case, they must raise this objection in writing, clearly stating their reasons, to the Head of HR.

The level of disciplinary action to be taken will be determined according to the seriousness and nature of the alleged misconduct. Once the formal disciplinary procedure has been initiated subsequent misconduct within the warning period may lead to further, and perhaps more serious, disciplinary action, which may ultimately lead to dismissal.

The employee will have the right of appeal against any disciplinary warning or sanction issued in the formal stages of the procedure. Please refer to the appeals section.

All matters relating to any part of this procedure will be treated in strict confidence. Any breach of this confidentiality may render those responsible liable to disciplinary action. However, it must be remembered that legislation requires the accused to be made aware of the allegations against them and the name(s) of those making the allegations, along with witnesses.

Employees will be expected to take reasonable steps to attend all meetings, whether as the employee concerned or as a witness. If the employee, or their chosen companion, is not available to attend on the date proposed, the CCG will endeavour to offer an alternative reasonable date within 10 working days of the original date wherever possible. Note: This meeting will normally only be re-arranged once, except in exceptional circumstances. If the employee concerned fails to attend without good reason and does not nominate a representative to attend in their absence, the meeting/hearing may take place in their absence and a decision will be made on the evidence available. Appropriate weight shall be given to the evidence of any witness that fails to attend a meeting/hearing and their reasons for non-attendance will be taken into account, if known.

3. Representation

During the formal stages of this policy, employees have the right to be accompanied by a trade union representative or a CCG work colleague to meetings held as a part of this stage of the process. The employee's companion may make representations and ask questions for the employee but they should not answer questions on the employee's behalf.

If the employee wishes to be accompanied to a meeting under this procedure, they should notify the manager holding the meeting in advance, giving the name of the employee's chosen companion within the deadlines specified in the letter of invitation to the meeting, if they are able to do so.

employees must take all reasonable steps to attend any meetings arranged under this policy and procedure.

In the event that a meeting relating to one of the formal stages is arranged and the trade union representative/CCG work colleague is unable to attend the meeting, the employee must immediately notify the manager holding the meeting and suggest an alternative time and date that is not more than 10 working days after the initial meeting date.

Legal representatives, whether solicitors, barristers or otherwise, are not permitted to take part in the proceedings in any capacity at any stage of this policy.

An individual may seek advice from their Trade Union Representative as and when required during the informal and formal stages.

4. Scope of Policy

If, in the course of a disciplinary process, a grievance/claim of bullying and harassment is raised that relates to the case, management consideration will be given to either suspending the disciplinary process for a short time whilst the grievance/bullying and harassment claim is managed under the respective policy or managed at the appropriate disciplinary stage. Where the matter is addressed and responded to via the disciplinary process, the outcome will act as the organisational response to the grievance/bullying & harassment matter/process without recourse via any other policy.

Alternatively, if it is considered that the grievance/bullying and harassment matters are not related to the disciplinary process, the CCG may appoint an alternative, neutral manager (or take the view that the already appointed manager is sufficiently neutral) to consider the grievance/bullying and harassment matter concurrently to the disciplinary process.

Separate policies exist for managing employees subject to a probationary period, capability and for managing absence and attendance. Unauthorised absence, however, will be dealt with as misconduct under this policy.

5. Police or Legal Proceedings

The CCG reserves the right to take appropriate action in line with this policy in circumstances where there are police or other legal proceedings. This would normally occur where the nature of the circumstances appears to have a bearing upon the employee's performance, their ability to fulfil their employment contract, or upon the employer's responsibilities to others.

Staff have a duty to disclose previous convictions during the recruitment process. The CCG will also undertake Disclosure and Barring Service checks on staff in designated positions.

Staff also have a duty to disclose convictions or criminal proceedings occurring during their employment with the CCG. This would include being arrested or cautioned.

If a criminal offence occurs within the CCG's premises the normal disciplinary procedure will be followed, although it will also rest with the relevant manager to contact the police with a view to a criminal charge being made.

Criminal offences outside employment, including associated police enquiries and legal proceedings, will not be treated as automatic reasons for dismissal. The main consideration will be whether the offence is one that makes the member of staff unsuitable for his or her post. Suitable alternative employment will be considered where possible.

The CCG may decide to postpone relevant internal proceedings, pending police/legal proceedings. Such proceedings include NHS Counter Fraud proceedings.

6. Informing Professional Bodies

The CCG reserves the right to inform the appropriate professional body in line with the professional body's code of conduct where the nature of the circumstances under investigation will have a bearing on the employees professional registration status and ability to fulfil their employment contract where registration is essential to the role the employee is carrying out. The employer and employee may need to keep the professional body up to date with the outcome of the investigation or co-operate with them in their own investigation (where applicable)

7. Roles and Responsibilities

Role of the Employees subject to the Disciplinary Policy

It is the responsibility of the employee concerned to arrange their own representation and to take all reasonable steps to attend meetings/hearings and cooperate with the Disciplinary Policy. Failure to do so without good reason may result in meetings /hearings taking place in the absence of the employee and/or their representative and a decision made on the information available.

Role of all staff

It should be noted that CCG staff are all expected to contribute to the successful implementation of this policy, to help the CCG ensure conduct standards are met. Therefore all staff are expected to comply with reasonable requests to cooperate with these policy. Professionally registered staff may also have obligations to do so under the terms of their professional registration.

Role of Human Resources

Human Resources (HR) staff are responsible for providing HR advice on the management of all disciplinary matters at all stages of this policy, and to ensure that the procedures are applied fairly and consistently.

HR is also responsible for maintaining accurate HR and disciplinary records and providing monitoring data.

8. Scheme of Delegation

Informal procedure	Line Manager or equivalent level manager from elsewhere within the organisation
Formal procedure	Line manager or equivalent level manager from elsewhere within the organisation or the line managers direct manager if the line manager has been previously involved or implicated
Appeal following formal procedure	Line Managers manager or equivalent who has not previously been involved or implicated
Dismissal Hearings	Chaired by a Director/Assistant/Deputy Director or equivalent plus one other manager and HR representative
Appeal against dismissal	Chaired by a Director plus one other manager and HR representative

9. Equal Opportunities

In applying this policy, the CCG will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age,

disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.

The Equality Impact Assessment for this policy has been carried out, and is available on request from HR.

As part of the CCG equal opportunities monitoring, all disciplinary hearings are monitored on a rolling annual basis. Subsequently information may be held on the disciplinary monitoring register longer than the duration of the warning itself.

10. Monitoring and Review

The policy and procedure will be reviewed every 3 years by Human Resources in conjunction with operational managers and Trade Union representatives. Where review is necessary due to legislative change, this will happen immediately.

11. Data Protection/GDPR

In applying this policy, the Organisation will have due regard for the Data Protection Act 2018 and the General Data Protection Regulation (GDPR). Personal Confidential Data of data subjects will be processed fairly and lawfully and in accordance with the six data protection principles. Data Subject's Rights and freedoms will be respected and measures will be in place to enable employees (data subjects) to exercise those rights. Appropriate technical and organisational measures will be designed and implemented to ensure an appropriate level of security is applied to the processing of personal confidential data. Employees will have access to the CCG's Data Protection Officer for advice in relation to the processing of their personal confidential data and data protection issues.

12. Informal Stage

Day-to-Day Management

It is part of the role of managers to manage the work of their staff on a day-to-day basis and to draw employees' attention to any shortcomings and give counsel or correction. However, in some circumstances it may become necessary to take further corrective action.

Formal Counselling: Improvement Note

It is in everyone's interests to avoid the need to invoke formal disciplinary proceedings where possible. To this end, formal counselling may be appropriate to discuss conduct standards and the discussion may result in an informal improvement note being issued.

Formal counselling should be carried out between the employee and their manager as part of good management practice. Such a meeting should be conducted in an atmosphere that encourages open discussion and enables the employee and manager to make the most of the opportunity for improvement provided them.

At the meeting, the manager should:

- counsel the employee to identify the unsatisfactory conduct
- discuss potential contributing factors and offer any support that might be appropriate to overcome these
- establish any other relevant circumstances
- identify the improvement required, where possible specifying realistic, measurable objectives and the period over which these should be achieved and sustained

- confirm when the conduct standards will be reviewed and the fact that formal action could be taken if the required improvement is not satisfactorily achieved and sustained

If the manager considers it reasonable to do so in the circumstances, they may issue the employee a formal improvement note to ensure clarity on the conduct issue, the action required of both the employee and the manager, including details of the improvement required, and the timescale, usually 4 -12 weeks. It is important that during the monitoring period, the manager continues to provide day-to-day management as outlined above in section 3.1 and ensures that the employee is appropriately supported to help them achieve and maintain the required standard. All 1:1/ review meetings during the review period should be written and notes shared with the employee. These discussions should inform the employee of their progress against any improvement required. Once the improvements have been met by the individual, the improvement note will be removed from the employee's file and disregarded for any future action.

If, during the initial discussion, it becomes obvious that the matter may be more serious, the meeting will be adjourned and the employee advised that an investigation will be instigated under the formal stages of the disciplinary policy.

If managed informally there is no right to be accompanied by a staff side representative or CCG workplace colleague to the meeting with the line manager.

13. Suspension

Suspension is not a disciplinary act and does not imply any suggestion of guilt. It is a neutral act, enabling an individual to be released from their place of work while receiving full pay, pending an investigation into the allegations made.

Staff may be redeployed by mutual agreement, or suspended on full pay, until the results of inquiries are known. Except in an emergency, the local representative of the trade union or professional organisation will be contacted about the suspension.

If it is undesirable for the employee to remain on the premises in a case of possible gross misconduct, potential risk to the CCG's property or potential risk to the CCG's duty to others, or any other cause; for example if there is a reasonable belief that evidence may be tampered with; then the employee should be suspended on full pay including enhancements, as if working normally, pending investigation.

Whilst on suspension employees are not to return to any the CCG site or contact any staff (or service users) without the express permission of the suspending/investigating manager. Mechanisms will be put in place to ensure the suspended member of staff has access to appropriate support during their suspension. Whilst on paid suspension, staff are expected to make themselves available to attend meetings during working hours.

The suspension should be regularly reviewed by the suspending manager.

In some circumstances it may not be possible to obtain relevant advice and therefore take a decision on whether to suspend, for example, at night or over weekends. In these circumstances, it may be acceptable to ask an employee to leave work on special paid leave and arrange a meeting to clarify how the matter will be dealt with at the earliest possible opportunity.

Normally the authority to suspend will be given only to those managers who have authority to dismiss, however during their absence the most senior manager on duty will have the authority to suspend an employee on full-pay in consultation with HR wherever possible.

The suspension must be confirmed in writing to the employee or their delegated representative and the reason(s) for the suspension stated. An example letter appears at Appendix 4.

14. Formal Stage

There may be circumstances where, despite formal counselling, an employee has failed to meet the required standards or sustain these. In addition, some conduct issues may be considered serious enough that informal action is inappropriate and formal action is warranted instead.

Before formal action is taken, the allegations of misconduct should be investigated to establish the circumstances.

Disciplinary Investigation

The investigation will be undertaken by the appropriate manager. The investigating manager may either be the line manager or nominate an alternative neutral manager to undertake the investigation. On occasions, it may be necessary to commission an investigation by an external provider. Once an investigating manager has been nominated the Commissioning manager is responsible for writing to the employee to inform them of who the investigating manager is.

In cases where the CCG manager becomes the investigation commissioning manager, the investigating manager will provide the investigation report to the Commissioning Manager.

The timetable for any further investigations will be made available to both the member of staff who raised the grievance, and the individual against whom the grievance has been raised. The investigating manager will endeavour to address the issue promptly.

The investigation manager will arrange to meet:

- The member of staff subject to the misconduct/gross misconduct allegations
- Any witnesses relevant to any of the matters being investigated
- Give a minimum of 5 days' notice of the investigation meeting

Relevant information relating to the investigation will be shared with those partaking in the investigation process to support the fact-finding investigation.

HR may also be present at the investigation meeting. All staff members invited to an investigation meeting will be entitled to be accompanied by a trade union representative or CCG work colleague.

The purpose of the investigation meetings will be for the relevant parties to provide information on the specific matters under investigation. It may be necessary to undertake further investigations of their response, in which case the meeting may be adjourned in order to enable this to take place, and reconvened within a reasonable period of time agreed with both parties.

If the member of staff who is the subject of the complaint, or their representative, is unable to attend on a proposed date, then they may suggest an alternative date, provided it is within 10 working days of the original date. This 10-day time limit may be extended by mutual agreement between both parties.

As part of the investigation, it may be necessary to gather witness statements and/or meet with witnesses and gather any other relevant information to assist in fully establishing the circumstances. The investigating manager will be responsible for ensuring all the appropriate information is gathered and that this is gathered in a way that preserves the integrity of the information and that does not subject witnesses to undue pressure. For this reason, the employee concerned and their representative will not be permitted to approach witnesses/potential witnesses unless explicitly allowed to do so by the investigating manager. A note of meetings carried out as part of the

investigation will be taken and distributed to the relevant parties if they are to be used at a later stage of this procedure

The process of investigation should normally take up to 28 calendar days, except for in more complex cases. The investigating manager should ensure that reasonable steps are taken to keep the period of investigation as short as possible, without compromising the fairness and thoroughness of the investigation. The investigating manager should take reasonable steps to minimise delays and should gather information from witnesses as quickly as possible before memories fade.

Once the investigation is complete the Commissioning Manager will be responsible for determining the outcome of the investigation. Staff will be advised of the outcome. Formal action/decisions will not be taken by the investigating manager. If the Commissioning/Investigation manager considers that there is a case to answer, the matter will be referred to a disciplinary hearing panel. If it is decided that the matter should be referred to a disciplinary hearing, the Commissioning manager will compile a written statement of their case, which will be distributed to all hearing attendees.

Where the investigation outcome will be considered by a Disciplinary Panel, the investigating manager may be asked to attend a Disciplinary Hearing to support the Commissioning Manager to present the management case.

15. Disciplinary Hearings

Role and Membership of the Disciplinary Hearing Panel

The hearing panel will consist of a chairperson, who will be assisted by an HR representative.

Advisors to the panel may be appointed, where specialist knowledge or experience is of use.

The Chair and their advisors will all equally be able to participate in proceedings, however, the responsibility for making the final decision will rest with the Chair. It is therefore important that consideration is given in advance as to the suitability of the Chair and that the Chair carefully considers all the circumstances and advice before reaching a decision. The Chair will also be responsible for ensuring the procedure followed is fair and that the circumstances of the matter are appropriately established to enable them to reach an appropriate decision. The HR representative will be able to provide further advice on these points.

The Chair has absolute discretion on the conduct of the hearing and may at any stage decide to adjourn/amend proceedings to ensure fairness and clarity on any points.

Possible Hearing Outcomes

The outcome of a disciplinary hearing will generally fall into one of the following categories:-

- Case dismissed
 - No action required
 - The employee is required to attend counselling or retraining
 - First written warning
 - Final written warning
 - Dismissal
-
- First Written Warning – if the issue is serious, it may be appropriate to issue a first written warning. A copy of the written warning will be kept on the employees file for 12 months. A

copy of the written warning will be kept on file but should be disregarded and removed for disciplinary purposes after 12 months.

- Final Written Warning – If the issue is more serious or if there is still an active First Written Warning in place and insufficient improvement has been made or further misconduct occurs, a Final Written Warning will normally be issued and will be kept on the employee's personal file for 12 months, as decided by the panel. A copy of the written warning will be kept on file but should be disregarded for disciplinary purposes after 12 months from the date of issue. In some cases, due to the seriousness of the misconduct, this period may be extended to a maximum of 24 months.
- Dismissal with notice - If, within 12 months of the issue of a Final Written Warning, further misconduct occurs or insufficient improvement has been made or if an issue is more serious, the employee will normally be dismissed with notice. The employee will be provided with written reasons for dismissal, the date on which the employment will terminate, their entitlement to pay, and the right of appeal.
- Dismissal without notice/Summary dismissal - Where behaviour or misconduct is sufficiently serious to constitute gross misconduct (see examples in Appendix 1) the employee will normally be summarily dismissed - i.e. without notice. In exceptional cases an alternative sanction may be applied. The employee will be provided with written reasons for dismissal, the date on which the employment will terminate and the right of appeal

Spent, inactive warnings shall be disregarded for disciplinary purposes and removed from an employee's formal record upon their expiry.

There is a right of appeal against each formal stage of the disciplinary process.

15. Disciplinary Hearing Procedure

Timescales

Before the disciplinary hearing the employee will be advised in writing of the purpose of the meeting and details of the complaint or allegation being considered, covering all issues to be discussed. The individual will be given a minimum of 10 working days' notice of the disciplinary hearing. If the individual, or their chosen companion, is not available to attend on the date proposed, the CCG will endeavour to offer an alternative reasonable date within 10 working days' of the original date wherever possible. Note: This meeting will normally only be re-arranged once, except in exceptional circumstances.

A disciplinary hearing will normally be convened within 28 calendar days of the conclusion of the investigation, wherever possible. The commissioning manager, investigating manager (if applicable), the employee and their representative will have the opportunity to submit a written case and supporting evidence that they wish to rely upon at the hearing. Additional information gathered by the employee, that they wish to present at the meeting, must also be made available to the disciplinary panel at least 5 working days prior to the meeting.

All documents to be used at the hearing should be submitted in sufficient time to ensure that they can be distributed to and received by all hearing attendees at least 5 working days in advance of the hearing. The date for exchanging these documents will be confirmed in writing to the employee and the commissioning manager, by the chair of the disciplinary panel. The commissioning manager and the employee and their representative should confirm by the same date the names and positions of those witnesses that they may wish to call at the hearing. The outcome of the disciplinary hearing will normally be communicated to all attendees within 5 working days and the employee concerned will have 10 working days from the date of that letter to appeal the outcome.

Witnesses & Observers

The commissioning manager is responsible for arranging the attendance of their witnesses. As detailed at Section 5.3, all staff are expected to comply with reasonable requests to cooperate with these procedures. Professionally registered staff may also have obligations to do so under the terms of their professional registration.

If the employee concerned, and their representative, wish to call witnesses at the disciplinary hearing, they will be responsible for arranging their attendance. However, if doing so could breach another part of this procedure, for example, the terms of suspension, requests for witness attendance may be passed through the HR representative.

The commissioning manager, the employee, and their representative should confirm by the document exchange date the names and positions of those witnesses that they may wish to call at the hearing.

Staff attending as witnesses will be given paid time off to attend and will be reimbursed for appropriate travelling expenses.

Witnesses for the respective parties must wait in separate waiting rooms, if possible, and must not be present at the hearing or appeal except for the purpose of giving evidence.

Arrangements must be made to avoid contact between witnesses who have been heard and those who have not yet given evidence. It is usual for witnesses to be questioned by both parties and by members of the panel and this is made clear in the procedure laid down for the hearing.

Observers may be present, for example, for training purposes. However, it will be at the discretion of the Chair whether to admit observers to the disciplinary hearing, with the agreement of all parties.

16. Possible Hearing Outcomes

The Chair will ensure that reasonable steps have been taken to establish the circumstances of the matter as fully as possible and that the procedure followed is fair. The Chair will fully consider all the information presented to them by both staff side and management side and relevant advice from the panel advisor/s in deciding whether to uphold the allegation/s.

If the Chair decides not to uphold the allegations, the disciplinary sanctions detailed in Section 4 of this procedure will not be imposed. However, the Chair may make other recommendations, for example to improve practice or the working environment or to reintroduce and support a previously suspended member of staff back to work. In some exceptional circumstances, this may include a recommendation to discuss the possibility of redeploying an individual; however, any move would be made in agreement with the employee.

If the Chair decides to uphold the allegation/s, in deciding the sanction to be imposed, they should take into account:-

- the employee's disciplinary and general employment record
- the employee's length of service
- actions taken in any previous cases, similar cases and any rules that may exist
- the explanations given by the employee

The Chair will then decide what action would be reasonable to take, considering all the circumstances. This may include taking no formal action or formal action such as that described under Section 4 of this procedure.

In addition to imposing one of the formal disciplinary sanctions listed in Section 4 of this procedure, the Chair may decide to call for any (or none) of the following:

- Redeployment of the employee concerned to an alternative role/work base
- Deferral of incremental pay progression
- Appropriate training and development
- Some other intervention, for example, to improve working practice or the working environment
- Withholding of pay for a period of unauthorised absence

17. Redeployment

If no formal disciplinary action is taken, the Chair may decide, exceptionally, to recommend the redeployment of the employee concerned. However, any proposed move will be discussed and agreed with the employee and their representative.

As part of a disciplinary hearing outcome, the Chair may decide to impose a move to an alternative role or work base. The employee and their representative will be consulted and suitable alternatives will be discussed with them, with a view to securing agreement. The process to be followed will emulate the individual consultation and redeployment phase set out in the CCG's Staff Affected by Change Policy. The CCG's Pay Protection Policy on protection of basic pay will also be followed, where applicable.

18. Deferral of Incremental Pay Progression

In accordance with the Agenda for Change: NHS Terms and Conditions of Service Handbook, if there are significant weaknesses in performance that have not been resolved despite opportunities for appropriate training/development and support, in exceptional circumstances pay progression may be deferred until the problems are resolved. Significant weaknesses are defined as those that prevent a staff member from continuing to apply consistently, across a recognised normal workload without continued supervision and support inappropriate to the post.

19. Appeals

Where formal disciplinary action is taken, the employee concerned has the right to appeal the Chair's decision within 10 working days of the date of the letter confirming the outcome of the hearing. Both the employee's intention to appeal and their detailed grounds for the appeal must be submitted at this stage.

20. Appeal Hearings

The procedure to be followed at an appeal hearing is detailed in Appendix 1, subject to section 10.5. The following points address other matters.

Appeal Hearing Timescales

An appeal hearing will normally be convened within 28 calendar days of receiving the grounds for appeal, where possible. Both the disciplinary hearing Chair and the appellant and their representative will have the opportunity to submit a written case and supporting evidence that they wish to rely upon at the appeal hearing. All documents to be used at the hearing should be submitted in sufficient time to ensure that they can be distributed to, and received by, all hearing attendees at

least 5 working days in advance of the hearing. No new evidence (subject to Section 10 of this procedure) should be submitted by either party. The date for exchanging these documents will be confirmed in writing to the appellant and the disciplinary hearing Chair. The outcome of the appeal hearing will normally be communicated to all attendees within 5 working days.

Appropriate weight shall be given to evidence of anyone that fails to attend the hearing and their reasons for non-attendance will be taken into account, if known.

Role and Membership of the Appeal Hearing Panel

The appeal hearing panel shall consist of a chairperson, one senior manager and a HR representative to provide procedural advice.

If possible and where relevant, one member of the panel should have knowledge of the field of work of the appellant. Members of the appeal panel should not have been involved in the preceding stages of the procedure. The panel may request the services of a specialist advisor to provide specialist advice to the appeal panel.

Each panel member will be able to participate equally in proceedings, however, the responsibility for making the final decision will rest with the Chair. It is therefore important that consideration is given in advance as to the suitability of the Chair and that the Chair carefully considers all the circumstances and advice before reaching a decision. The Chair will also be responsible for ensuring the procedure followed is fair and that the circumstances of the matter are appropriately established to enable them to reach an appropriate decision. The HR representative will be able to provide further advice on these points.

The decision of the appeal hearing Chair will be final and the employee will have no further recourse to have the matter further examined under any of the CCG's policies and procedures.

Appeal Re-hearings (exceptional circumstances only)

Appeal hearings are normally a review of the decision made by the Chair of the disciplinary hearing. However, in some exceptional circumstances it may be necessary to conduct an appeal re-hearing to re-hear the disciplinary hearing, either in full or in part. Such exceptional circumstances may include where new evidence has come to light following the conclusion of the disciplinary hearing or where the Chair has a reasonable belief that the appellant has established a prima-facie case to demonstrate that the disciplinary hearing may have been rendered unfair due to procedural irregularities. The decision on whether to hear a full or part appeal re-hearing rests with the appeal hearing Chair and the procedure to be followed in such circumstances is detailed at Appendix 1.

New evidence may be submitted at an appeal re-hearing and witnesses may also be called by both parties if agreed by the appeal panel chair. Requests for a re-hearing and the grounds for such a request should be submitted by the appellant along with their grounds for appeal. Details of any witnesses to be called should be provided by the document exchange deadline. The appeal hearing Chair has absolute discretion on the conduct of the appeal hearing and may at any stage decide to adjourn/amend proceedings to ensure fairness and clarity on any points and may call for a full or part re-hearing even if not requested by either party.

Possible Appeal Hearing Outcomes

The Chair will ensure that reasonable steps have been taken to establish the circumstances of the matter as fully as possible and that the procedure followed is fair. The Chair will fully consider all the information presented to them by both staff side and management side and relevant advice from the panel members and advisor/s in deciding whether to uphold the allegation/s and sanctions imposed at the disciplinary hearing.

The Chair may decide that the allegation/s cannot be upheld and may therefore overturn the sanctions imposed at the disciplinary hearing. The Chair may, however, call for other action that does not constitute formal disciplinary action, for example, measures to improve practices or in some exceptional cases, redeployment, as outlined in Section 10 of this procedure.

If the Chair decides to uphold the allegation/s, they must then consider the reasonableness of the disciplinary sanction/s previously imposed in all the circumstances. The Chair may decide to uphold the previous sanction/s or reduce/increase the level of sanction and/or remove/add other requirements, for example, redeployment, training/development, deferral of incremental pay progression, or some other intervention, as detailed in Section 10 of this procedure.

Appendix 1: Disciplinary & Appeal Hearing Procedure

Disciplinary Hearing

At a disciplinary hearing the following procedures shall be observed:

- (a) The Commissioning Manager with support from the Investigating Manager (if a different investigating manager investigated the case) shall state the case in the presence of the employee and their representative and may call witnesses.
- (b) The employee and/or her/his representative shall have the opportunity to ask questions of the Commissioning Manager/Investigating Manager and their witnesses.
- (c) The members of the Disciplinary Panel shall have the opportunity to ask questions of the Commissioning Manager /Investigating Manager and witnesses.
- (d) All parties shall have the opportunity to cross-examine the witnesses on any matter referred to in their examination by members of the Disciplinary Panel, the employee or their representative.
- (e) The employee and/or their representative shall put their case in the presence of the Commissioning Manager /Investigating Manager and may call witnesses.
- (f) The Commissioning Manager shall have the opportunity to ask questions of the employee, their representative and their witnesses.
- (g) The members of the Disciplinary Panel shall have the opportunity to ask questions of the employee, their representative or their witnesses.
- (h) The employee and/or their representative shall have the opportunity to re-examine her/his witnesses on any matter referred to in their cross examination by members of the Disciplinary Panel or the Commissioning Manager /Investigating Manager.
- (i) The Commissioning Manager and the employee or their representative shall have the opportunity to sum up their cases if they so wish. The employee and/or their representative shall have the right to speak last. In their summing up neither party may introduce any new matter.
- (j) Nothing in the foregoing procedure shall prevent the Disciplinary panel from questioning witnesses, management and staffside as appropriate to clarify issues or seek supplementary information, manage the conduct of the case presenters or to amend proceedings to ensure fairness, clarity and the ability to hear the matters appropriately.
- (k) If at the outset, the employee concerned admits the allegation/s and does not contest the evidence presented by the Commissioning Manager /Investigating Manager, the Chair may decide, with the agreement of all parties, to amend the procedures and hear evidence solely relevant to the level of sanction, for example, on mitigating circumstances and the seriousness/consequences of the allegation/s in order to determine the appropriate level of sanction.
- (l) The Disciplinary Panel may, at its discretion, adjourn the hearing in order that further evidence may be produced by either party or for any other reason. If further evidence is produced then both parties will have the opportunity to test the evidence put before the hearing.
- (m) The Commissioning Manager /Investigating Manager, the employee and their representative and witnesses shall withdraw.

- (n) The Disciplinary Panel shall deliberate in private only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties shall return notwithstanding only one is concerned with the point giving rise to doubt.
- (o) No statement of previous acts of misconduct by the employee or the issue of a formal warning or warnings unrelated to the alleged offence(s) on which the disciplinary action is based shall be made until after the Chair has reached a decision on the allegations.

Appeal Hearing

At the hearing of an Appeal Review the following procedures should be observed.

- (a) The appellant and/or their representative shall put their case in the presence of The CCG's representative.
- (b) The CCG's representative and members of the Appeal Panel shall have the opportunity to ask questions of the appellant and/or their representative.
- (c) The CCG's representative shall state The CCG's case in the presence of the appellant and their representative.
- (d) The appellant and their representative and members of the Appeal Panel shall have the opportunity to ask questions of The CCG's representative.
- (e) The CCG's representative and the appellant or their representative shall have the opportunity to sum up their cases. In their summing up neither party may introduce any new matter.
- (f) Nothing in the foregoing procedure shall prevent members of the Appeal Panel from seeking to clarify any points from either party, managing the conduct of the case presenters or amending proceedings to ensure fairness, clarity and the ability to hear the matters appropriately.
- (g) No statement of previous acts of misconduct or the issue of a formal warning or warnings unrelated to the alleged offence(s) on which the disciplinary action is based should be made until after the Panel has reached a decision on the appeal.

Appeal Re-hearing

At an Appeal Re-hearing the following procedures should be observed:

- (a) The appellant and/or their representative shall put their case in the presence of The CCG's representative and may call witnesses.
- (b) The CCG's representative shall have the opportunity to ask questions of the appellant, their representative and witnesses.
- (c) The members of the Appeal Panel shall have the opportunity to ask questions of the appellant, their representative and/or their witnesses.
- (d) The appellant and/or their representative shall have the opportunity to cross examine their witnesses on any matter referred to in their examination by members of the appeal Panel or The CCG's representative.

- (e) The CCG's representative shall state The CCG's case in the presence of the appellant and their representative and may call witnesses.
- (f) The appellant and their representative shall have the opportunity to ask questions of the CCG's representative and witnesses.
- (g) The members of the Appeal Panel shall have the opportunity to ask questions of the CCG's representative and witnesses.
- (h) The CCG's representative shall have the opportunity to cross examine the witnesses on any matter referred to in their examination by members of the appeal Panel, the appellant or their representative.
- (i) The CCG's representative and the appellant or their representative shall have the opportunity to sum up their cases if they so wish. The appellant or their representative shall have the right to speak last. In their summing up neither party may introduce any new matter.
- (j) Nothing in the foregoing procedure shall prevent the Appeal Panel from questioning witnesses, management side and staffside as appropriate to clarify issues or seek supplementary information.
- (k) The Panel may, at its discretion, adjourn the appeal in order that further evidence may be produced by either party or for any other reason.
- (l) The Panel Chair has discretion over the calling of witnesses, the conduct of the case presenters, amending proceedings to ensure fairness, clarity and the ability to hear the matters appropriately and any policy decision arising from the procedure.
- (m) The CCG's representative, the appellant and their representative and witnesses shall withdraw.
- (n) The Panel shall deliberate in private only recalling both parties to clear points of uncertainty on evidence already given. If recall is necessary, both parties shall return notwithstanding only one is concerned with the point giving rise to doubt.
- (o) No statement of previous acts of misconduct by the employee or the issue of a formal warning or warnings unrelated to the alleged offence(s) on which the disciplinary action is based shall be made until after the Panel has reached a decision on the appeal.

Appendix 2: Examples of misconduct and gross misconduct offences

1) Misconduct:

- Timekeeping
- Health and Safety
- Abuse of Facilities
- Misconduct
- Contravention of codes of conduct/other rules

2) Gross Misconduct e.g.

theft; fraud; deliberate falsification of records; fighting; assault or abuse of another person; deliberate damage to/serious abuse of CCG property/facilities; serious incapability through alcohol or being under the influence of illegal drugs; serious negligence which causes unacceptable loss, damage or injury; serious act of insubordination; unauthorised entry to computer records; unauthorised access and use of confidential/sensitive data; discrimination; harassment; victimisation; bullying; threatening/intimidating/violent behaviour.

NB This list contains only some examples and is by no means exhaustive.