

# Culture&

## Culture& Disciplinary Policy

### 1. Purpose

1.1 Culture& expects satisfactory standards of behaviour, conduct and attendance from all its employees. This policy determines the procedures to be followed when standards of conduct give rise to problems which cannot be resolved by advice and encouragement, training or increased support.

### 2. Scope

2.1 This policy applies to all Culture& current employees.

### 3. Definitions

3.1 In this policy "employees" are people who work for Culture& under a contract of employment.

3.2 In this policy "parties" refers to the employee against whom the disciplinary action is being considered, and the manager who initiates the procedure.

3.3 The term 'HR Advisor' refers to any person within Human Resources who is providing advice.

### 4. Policy

#### Principles

4.1 *Fairness*: This procedure should be applied consistently, promptly, impartially, reasonably and without discrimination. Annual monitoring will be undertaken to ensure action initiated and any sanctions issued do not impact unfairly on any one group or in any one area.

4.2 *Confidentiality*: Information relating to an allegation of misconduct should only be divulged to any parties directly involved in the disciplinary process and must remain strictly confidential to those people.

4.3 *Natural justice*: At every formal stage of the disciplinary procedure, the employee will be advised of the nature of the complaint in writing and will be given the opportunity to state their case before a decision is made. Where a warning is given, the employee will be provided with appropriate support to improve their conduct.

4.4 *Informal Action*: Informal action should be used wherever possible and appropriate to resolve conduct or behaviour before formal disciplinary action is considered.

4.5 *Investigation*: No disciplinary action should be taken (i.e. disciplinary hearing arranged) against an employee until the case has been fully investigated.

4.6 *Dismissal*: No employee should be dismissed for a first breach of discipline except in the case of gross misconduct.

4.7 *Right of Appeal*: An employee has a right of appeal against any formal disciplinary sanction in accordance with the Appeals Procedure. Sanctions, including dismissal or warnings issued as a result of procedures, will remain in place pending the outcome of any appeal.

**4.8 Representation:** An employee has the right to be accompanied by a companion who is a work colleague, trade union representative or an official employed by a trade union, at every stage of the formal procedure. The employee must notify the panel of their chosen companion prior to a meeting.

**4.9 Discipline and Grievance:** Any concerns that an employee has regarding disciplinary action being taken against them should be raised as part of their response to the disciplinary action and will normally be considered within this procedure. Any grievance (see Culture's Grievance Policy) raised by an employee who is already subject to a disciplinary process (and which does not relate to it) will normally be heard on completion of the disciplinary procedure. A Manager, at their discretion, may halt disciplinary proceedings and deal with the grievance first.

**4.10 Recordings:** Audio/Visual recordings of the proceedings by the employee, their companion or managers are not acceptable at any stage of the disciplinary procedure and will not be admissible within this process, unless agreed as a reasonable adaptation.

## **5. Process - Informal Action**

**5.1** It is part of the normal supervisory process that managers bring to the attention of employees the standards required and any incidences of failure to meet those standards. Cases of minor misconduct should be dealt with by the employee's line manager informally and without delay.

**5.2** A one-to-one confidential discussion should be held between the manager and the employee to ensure that the employee understands the nature of any concerns. This discussion should enable the manager to provide constructive feedback and the employee to express views on the issue.

**5.3** Managers should ascertain whether any alleged failure to meet required standards or breach of policy or procedure is due to misconduct, capability or some other reason when determining the appropriate approach to take. Advice should be sought from HR as to alternative options that could be considered.

**5.4** Where the need for improvement is identified, the manager should explain to the employee what needs to be done, how the conduct will be reviewed in a given period and the nature of any support available.

**5.5** Brief confidential notes of this meeting, including details of any required actions or improvements, should be kept by the manager and a copy sent to the employee.

**5.6** It is important that both parties understand that informal action is not part of the formal disciplinary procedure and that employees are not entitled to representation at these meetings.

## **Formal Disciplinary Action**

**5.7** Where informal action does not lead to improved behaviour, or where the alleged misconduct is more serious so that informal action is considered inappropriate, formal action should be initiated.

**5.8** Definition of what could constitute misconduct and examples of potential offences of gross misconduct, either of which may lead to formal action, can be found at **Annex A**.

### **Suspension on full pay**

5.9 There may be occasions when it is necessary to suspend an individual on full pay whilst investigations are being carried out. Careful consideration must be given before a decision to suspend is taken. Reasonable grounds for suspension include, but are not limited to, concern that evidence may be tampered with or destroyed; concerns that an employee accused of misconduct may seek to inappropriately influence witnesses; or when there is potential risk to other employees or Culture& property if the individual remains at work. The fact and conditions of the suspension should be confirmed in a letter to the employee at the earliest opportunity.

5.10 Suspension is not a disciplinary sanction and is not an assumption of guilt. Normally an employee will be suspended by the Head of Department after consulting with Human Resources. Human Resources may also suspend a member of staff. Exceptionally, it may be necessary for a Head of Department to send an employee home before being able to consult the Director of Human Resources.

5.11 The suspension should last only as long as is necessary and should be reviewed at regular intervals (at least on a monthly basis) by the suspending manager. The outcome of such a review should confirm whether the suspension should continue, be converted to other temporary working arrangements or be lifted. The outcome of the review should be confirmed in writing to the employee.

5.12 If an employee has been suspended, or where other limitations have been placed on accessing documents or witnesses, the employee should discuss reasonable access to facilities with a HR Advisor, to enable a fair response to any allegations.

### **Suspension without pay**

5.13 Suspension without pay will occur where an employee is unable to provide valid proof of their right to work in the UK or where the evidence provided requires further verification in line with the Immigration Act 2016. Where an employee's continued right to work cannot be verified, Culture& will suspend pay without delay, as failure to do so would be in breach of the Immigration Act 2016. The conditions of the suspension without pay should be confirmed in writing at the earliest possible opportunity.

5.14 It may be necessary for Culture& to suspend without pay an employee whilst right to work information is being verified. Under such circumstances any pay lost during a period of suspension may be reimbursed although no pay can be issued for any period during which an employee does not have the right to work in the UK.

5.15 In the event that, under Immigration rules, an employee ceases to be entitled to work in the UK, they will be dismissed without notice. There will be no Pay in Lieu of Notice under such circumstances. An employee whose employment has been terminated as a result of a statutory restriction, may be reinstated with full continuity of service, if right to work evidence is provided within one month of a dismissal.

### **Temporary Working Arrangements**

5.16 Where suspension is not necessary or proportionate, it may be appropriate to consider a temporary variation to working arrangements whilst the investigation is undertaken. This could include movement to a different team, or a partial reduction in some duties, e.g. whilst a health and safety assessment is undertaken.

5.17 Any temporary variation to duties should only last as long as is necessary and reviewed at regular intervals (at least on a monthly basis) by the manager. The outcome of such a review should confirm whether the temporary working arrangements should continue or be lifted. The outcome of the review should be confirmed in writing to the employee.

### **Investigation**

5.18 A disciplinary penalty must not be applied until the necessary facts have been established and a hearing convened to consider the allegations. The procedure for undertaking a disciplinary investigation to determine whether a formal disciplinary penalty may be justified can be found at **Annex B**.

5.19 If, following investigation, it is considered that the matter may be more appropriately dealt with under a different procedure, e.g. capability, the investigation report shall be used at any Hearing processes continued under the appropriate procedure.

### **Formal Disciplinary Hearing**

5.20 Where, following receipt of an investigation report, the Head of Department decides that there is a case to answer they should establish a disciplinary hearing. The process for establishing and conducting a disciplinary hearing can be found at **Annex C** and is also shown in the flow-chart at **Annex D**.

5.21 Formal disciplinary action that may result in an oral or written being issued shall be managed in line with the provisions of this policy and procedures. A Hearing will normally be chaired by the Head of Department (except where natural justice dictates otherwise) and an Appeal heard by the CEO.

5.22 If a hearing decides that disciplinary action against an employee is justified a sanction should be awarded from the list that can be found at **Annex E**.

## **6. Appeals**

6.1 An employee has the right to appeal against any formal disciplinary sanctions issued. The Appeals procedure can be found outlined at **Annex F7**.

## **7. Monitoring and Review**

7.1 HR will undertake annual equality monitoring to keep the fair operation of this policy under review.

### **Appendices:**

**Appendix A – Misconduct and Gross Misconduct**

**Appendix B – Managing a Disciplinary Investigation**

**Appendix C – Procedure for Disciplinary Hearing**

**Appendix D – Disciplinary Procedure Flowchart**

**Appendix E – Levels of Disciplinary Action**

**Appendix F – Appeals Procedure**

## **Annex A - Misconduct and Gross Misconduct**

Misconduct is any type of behaviour or conduct at work that falls below the standard required by Culture& or is a breach of Culture& policies and procedures including, but not limited to, a range of issues such as health and safety; timekeeping; bullying and harassment; obeying reasonable instructions; intellectual property; compliance with ethical guidelines; claiming expenses; care in handling Culture& property; unauthorised removal of Culture& property from Culture& premises; and use of email and the internet, including social media.

Minor offences or breaches should be dealt with informally. More serious offences should be dealt with formally. Persistent offences of misconduct may lead to termination of employment.

Gross misconduct is misconduct of such a serious nature that it fundamentally breaches the contractual relationship between the employee and the organisation. In the event that an employee commits an act of gross misconduct, the employer will be entitled to dismiss the employee summarily.

### **Gross Misconduct**

Examples of Gross Misconduct which may lead to summary dismissal include but are not limited to:

- Theft, fraud or deliberate falsification of records or Culture& documents;
- Serious or gross negligence resulting in unacceptable loss, damage or injury;
- Intentional serious breach of Culture& policy or regulations or improper conduct in relation to job responsibilities;
- Assault or attempted assault of a physical or sexual nature;
- Malicious damage to Culture& property;
- Intentional misuse of confidential information;
- Fraudulent misuse of Culture&'s property or name;
- Unauthorised entry to computer records or inappropriate use of Culture& data or computing equipment, including social media;
- Serious breaches of Health and Safety rules
- Bringing Culture& into serious disrepute including Serious Misconduct outside work.

Conviction or being charged with a criminal offence outside the workplace and normal working hours may be deemed as misconduct or gross misconduct, though not automatically. Each case should be considered as to the individual circumstances including the nature of the offence, effect of the charge on the employee's suitability to do the job and his/her relationship with Culture&, colleagues, trainees and those external to Culture& and any sentence incurred.

## **Annex B – Managing a Disciplinary Investigation**

### **1. Initiating an Investigation**

Where it is suspected or alleged that an employee has acted in a way that could lead to formal disciplinary action being taken an Investigating Manager, normally a senior member of the Faculty/Division<sup>1</sup>, should be appointed to investigate the facts of the allegation/complaint. The Investigating Manager should not normally be the employee's line manager, the line manager of any person making a complaint or someone who works very closely with the individual concerned or the person making a complaint. The capacity of the proposed Investigating Manager to undertake the investigation promptly should be ascertained, or other work reprioritised to enable them to do so.

A relevant member of HR Advisory Services who will be the HR Advisor must be contacted by the manager initiating the investigation to provide advice and support in investigating a disciplinary matter.

The nature and extent of the investigation will depend on the seriousness of the concerns. It is important that the investigation is sufficiently prioritised so that the report is completed promptly, whilst maintaining sufficient rigour. If there is no disagreement concerning the facts of the case because the employee admits misconduct, further investigation may not be necessary before a disciplinary hearing is arranged.

### **2. Conducting an Investigation**

The Investigating Manager's role is to establish the facts of the alleged misconduct case so that it can be determined whether there is a disciplinary case to answer. They should investigate all aspects of the allegation.

An employee should be informed promptly, normally within five working days, in writing by the Investigating Manager that an investigation is being undertaken and given the opportunity to respond to the allegation. As part of the investigation the employee who is the subject of the allegation will normally be invited to an investigatory interview. The employee must be notified of the meeting so they have reasonable time to prepare for it. The investigation will also include the collation of evidence for a possible hearing, taking statements from and usually meeting with relevant parties, including where appropriate, any witnesses to the alleged incident(s) of misconduct. Any witness to the alleged misconduct may be required to make a signed and dated written statement as soon as possible after the investigation meeting.

The Investigating Manager may be accompanied by a colleague from HR Advisory Services at such meeting(s) to provide advice and guidance. The employee concerned may be accompanied at such meeting(s) by a companion. Witnesses do not have the right to be accompanied at these meetings as they are not the subject of the investigation.

Once the investigation has been completed the Investigating Manager will prepare a report on the findings of their investigation for the attention of the Head of Department. There may be exceptional circumstances where the identity of the person making the complaint will not be revealed as part of the investigation report i.e. where someone's welfare may be put at risk. The Head of Department will then consult with an HR Advisor to determine whether or not a disciplinary hearing is required based upon the findings of the investigation. If it is agreed that no disciplinary hearing is required the employee should be advised accordingly. Where the investigation concludes that there is a potential case to answer a formal disciplinary hearing should be convened. If the Head of Department considers that it is not appropriate to convene a formal disciplinary hearing, but that informal advice or guidance is appropriate, any resulting discussion should take place under the informal procedure.

## Confidential Investigation Report

*This template report format is for guidance purposes only; and may be changed to reflect the individual circumstances/needs of a case.*

Department	
Allegation/Issue	
Type of Investigation e.g. Disciplinary/Grievance, etc.	
Name/Job Title of employee(s) subject to investigation	
Name of complainant (if appropriate)	
Investigator(s)	
HR Advisor	

Background
<p>This may cover:</p> <ul style="list-style-type: none"> <li>• How did the issue come to light?</li> <li>• Have any other actions been taken prior to the investigation?</li> </ul>
Remit of The Investigation
<p>This may cover:</p> <ul style="list-style-type: none"> <li>• What specific allegations/concerns (by bullet points) were investigated?</li> </ul>
Investigation Process

<p>This may cover:</p> <ul style="list-style-type: none"><li>• A brief description of method(s) used to gather information.</li><li>• A record of what interviews/statements were undertaken and documents reviewed.</li></ul>
<p>Findings</p>
<p>This should cover:</p> <ul style="list-style-type: none"><li>• A summary of findings and observations for each specific allegation/issue of concern investigated, cross-referencing any documentation where needed.</li></ul>
<p>Conclusions</p>
<p>This may cover:</p> <ul style="list-style-type: none"><li>• For each concern/allegation investigated an overall opinion based 'on the balance of probabilities' on whether there is evidence to support allegations made.</li><li>• Recommendations on whether further actions under the relevant employment procedure should be taken.</li></ul>
<p>Appendices</p>
<p>These should be attached and may include witness statements, investigatory interview notes, chronology of events etc.</p>
<p>Signed by Investigating Officer:</p>
<p>Date:</p>



## Annex C – Procedure for disciplinary hearing

This appendix outlines the procedure for establishing and running a disciplinary hearing.

### Timescales

A timeframe over which the procedure should run is set out below. This timeframe is indicative and in certain circumstances it may be necessary to extend the timeframe outlined. Where it is not possible for either party to meet the particular time limit he or she is responsible for advising the HR Advisor who will notify the other party of a revised estimated timeframe, which should not extend from the minimum 10 working days (pro rata) to beyond a calendar month in total.

*Timeframes should be adjusted on a pro-rata basis for employees that are not full-time i.e. an employee working 3 days a week should have no later than 6 working days' notice of a hearing.*

Process	Timeframe
Panel Chair/Hearing Manager notifies employee in writing that s/he is required to attend a disciplinary hearing. Employee provided with details of the alleged disciplinary offence.	No later than 10 working days before the date of the hearing.
Employee contacts HR to request witnesses to be called at hearing. Employee is responsible for organising their own witnesses' statements.	No later than 8 working days before the date of the hearing.
All written submissions including witness statements must be submitted to HR.	No later than 7 working days before the date of the hearing <i>or in line with deadline agreed by both parties.</i>
Panel Chair/Hearing Manager approves requested witnesses and/or identifies additional panel.	No later than 6 working days before the date of the hearing.
HR invites required witnesses to hearing, providing a copy of this procedure.	No later than 5 working days before the date of the hearing.
Both parties and all panel members provided with copies of all written submissions received.	No later than 5 working days before the date of the hearing <i>or in line with deadline agreed by both parties.</i>
Hearing	
Panel Chair/Hearing Manager notifies employee orally of outcome of disciplinary hearing.	Within one working day of the decision.

Panel Chair/Hearing Manager notifies employee of outcome of disciplinary hearing in writing and informs employee of right of appeal.	No later than 5 working days after decision made.
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### Arranging the Hearing

Unless the hearing could result in the dismissal of the employee, the disciplinary hearing will be undertaken by a senior manager who will be deemed the Hearing Manager. The Hearing Manager will normally be the Head of Department of the employee. The Hearing Manager/Panel will be advised by an HR advisor who must be present during the hearing in an advisory capacity and may contribute where necessary. The HR representative will be responsible for taking notes of the hearing.

If an employee subject to the disciplinary process objects to the composition of the panel they should make that objection known to the Director and HR at the earliest opportunity. The Director and HR will consider the objection and amend panel membership if appropriate.

Before the hearing takes place, the employee should be:

- Given a minimum of *ten* working days advance notice of the date, time and location of the hearing in writing;
- Provided at the same time, with sufficient details of the charge against them and its possible consequences (including risk of dismissal, where appropriate) to enable her/him to prepare a response to the charge at the hearing;
- Advised of their rights to be accompanied at the hearing by a companion;
- Provided with names of any witnesses, written copies of evidence and all relevant documentation gathered in relation to the alleged misconduct no less than *five* working days in advance of the hearing or in line with a deadline agreed by both parties.

The employee should inform HR in writing of the names of any witnesses they would wish to call with brief reasons for each request at least *eight* working days in advance of the hearing. They should provide to HR any written statements or documentary evidence which they have not already provided as part of the investigation at least *seven* working days in advance of the hearing, unless agreed otherwise by both parties.

HR will notify any requested witnesses of the date/venue of the Hearing and assist with their release to attend the hearing if required. (Witnesses will not have the right to be accompanied by a companion). The Panel Chair/Hearing Manager is entitled to query the purpose of any witness being called and has the right to limit the number of witnesses called, where s/he believes there will be no additional value or insight added by their presence. The Panel Chair/Hearing Manager may also call additional witnesses that can give insight or provide expert evidence.

Where it is not practical for witnesses to attend, the Panel Chair/Hearing Manager may continue to proceed with a hearing if s/he is of the view that the lack of verbal evidence from that witness will not affect the outcome of the hearing.

The employee and his/her companion must make every effort to attend the hearing. If the chosen companion is not available at the time proposed for the meeting, the employee has the right to request that the meeting be postponed and to suggest an alternative time within

five working days of the original hearing date. If the employee fails to attend for reasons outside of his/her control e.g. sickness, another suitable date may be proposed for the hearing. If an employee fails to attend a scheduled disciplinary hearing on two occasions without good reason, the hearing shall proceed in his/her absence and a decision will be made on the evidence available.

### **Disciplinary Hearing**

The Panel Chair/Hearing Manager must ensure equal treatment of all parties and that all aspects of the case are considered. During the hearing the Panel Chair/Hearing Manager may seek further clarification of the written submissions from any parties they feel are necessary or adjourn the hearing at any time they think appropriate.

The employee and any companion should be present throughout the hearing. The companion shall have an opportunity to address the hearing, put and sum up the employee's case, respond on behalf of the employee to any views expressed at the meeting, and confer with the employee during the hearing. The companion does not have the right to answer questions on the employee's behalf, address the hearing if the employee does not wish it, or prevent the employer from explaining his/her case.

The Investigating Manager will normally be required to attend the hearing in order to present their report and outline evidence against the employee. They may also present any witnesses. The employee (or their companion) will be able to present their case in response to the charge including calling any witnesses that the Panel Chair/Hearing Manager has agreed can be presented (see para. 2.5). Both parties shall have the right to question the other party's witnesses and raise any issues they wish to be considered. Panel members will be able to question all parties.

*NOTE: Any witnesses who are required to attend meetings under this procedure at times other than their normal working hours will be paid plain time, overtime or given time off in lieu.*

Notes will be taken of all disciplinary hearings. These should be made available to all parties as soon as possible after the hearing. Any factual inaccuracies of notes should be raised with the Panel Chair/Hearing Manager within *five* working days of receipt.

### **Decision**

After the hearing, the Panel/Hearing Manager should consider the evidence in private undertaking any further investigation where necessary, before deciding whether or not the allegations are upheld. Each allegation must be considered separately. Where the facts of the case have been in dispute and a full investigation has been conducted, there must be a 'reasonably held belief on the grounds of probability' that the employee committed an act of misconduct, for a sanction to be justified. The Panel/Hearing Manager will then consider any mitigation put forward and, taking into account any existing 'live' warnings, decide what level of disciplinary action is appropriate from the list of sanctions in Annex E.

### **Notification of Outcome**

The Panel Chair/Hearing Manager should advise the employee orally of the decision within *one* working day of it being made. Written confirmation with full reasoning for the decision will be provided to the employee no later than *five* working days after the decision is made.

If it is decided that disciplinary action will be taken, the written confirmation of the outcome should include:

- The nature of the misconduct.
- The disciplinary sanction awarded including the level of any warning given.
- The reasons why the disciplinary action was taken.
- The consequences of any further failure to adhere to acceptable standards of conduct. In cases where a final written warning is given it should be made clear that further formal disciplinary action may result in dismissal.
- The provision of any support, counselling or corrective action that is required and if not immediate, the time period within which, improvement will be expected.
- The time period within which the warning will be considered to have lapsed.
- The fact that a record of warnings will be kept.
- The right of appeal.

### **Procedure for Disciplinary Hearing**

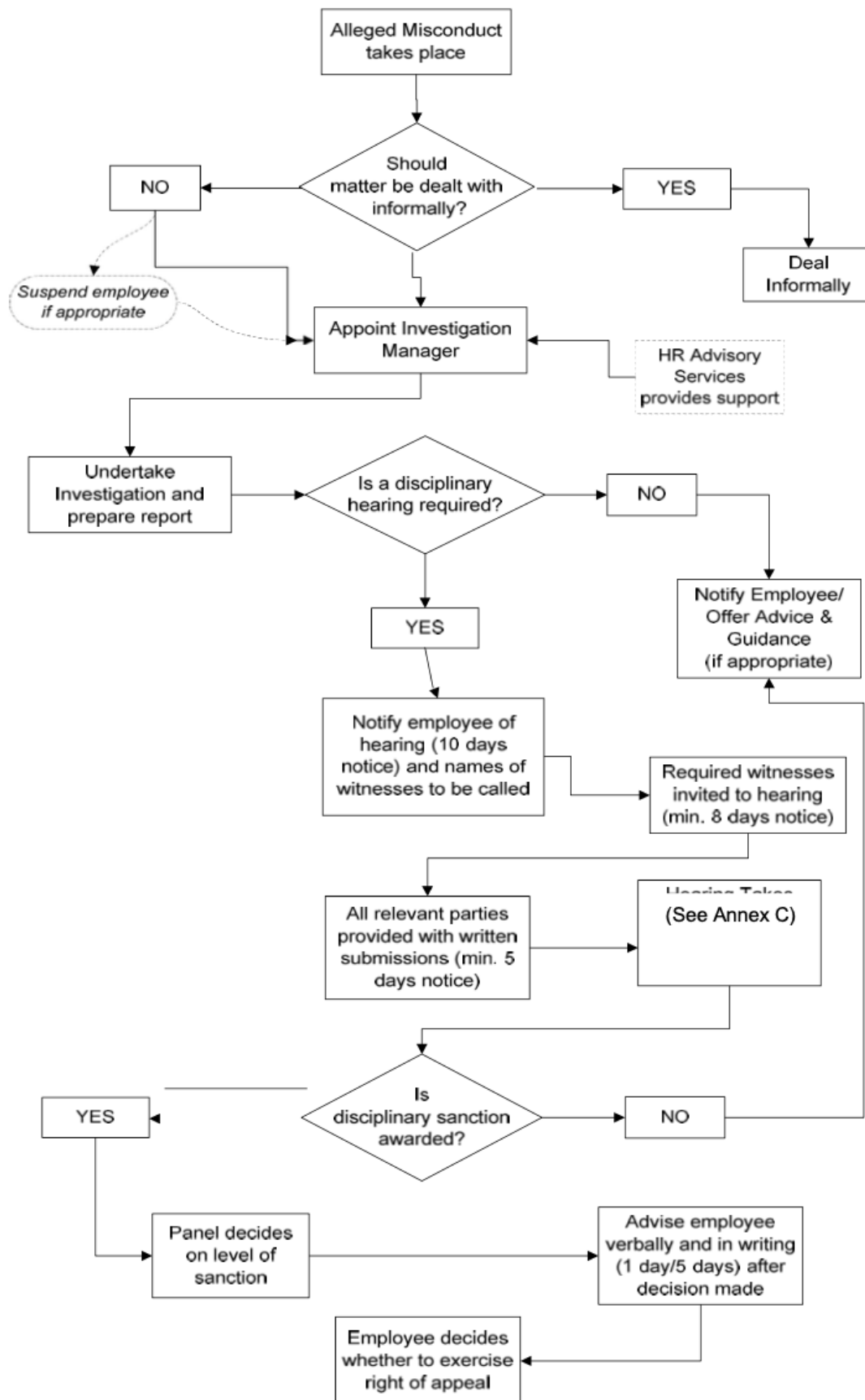
The order of the hearing should be in line with the following:

- The Panel Chair/Hearing Manager introduces those present and outlines the complaints/charges against the employee.
- The Investigating Manager presents the evidence supporting the charges against the employee and presents any witnesses.
- The Panel member(s) and then the employee (or his/her chosen companion) have the opportunity to ask questions of the Investigating Manager and witnesses and raise points about information provided by them.
- The employee (or their companion) sets out his/her case in response to the charges and presents any witnesses.
- The Panel member(s) and the Investigating Manager have the opportunity to ask questions of the employee or their witnesses and raise points about information provided by them.
- The Panel members(s) ask(s) any final questions of the employee or Investigating Manager. Witnesses may exceptionally be recalled at this stage.
- The Investigating Manager and then the employee (or their companion) have the opportunity to sum up their case and make any final comments. No new evidence should be introduced at this point.
- The Panel Chair/Hearing Manager summarises the key points made and closes the hearing. They should advise the employee when they might reasonably expect a decision.

- The Panel/Hearing Manager consider whether allegations are substantiated. They then consider any mitigation put forward. On combining the two aspects they will decide what, if any disciplinary action is necessary.

If the Panel believes that further investigation of points raised at the meeting is needed before a decision can be made, the Panel Chair/Hearing Manager can adjourn the Hearing to allow this to take place and if required can re-convene the hearing at a later date.

## Annex D – Disciplinary Procedure Flowchart



## **Annex E - Levels of Disciplinary Action**

Disciplinary action can range from a Formal Oral Warning to Dismissal dependent upon the gravity of the case and/or the on-going nature of misconduct. Levels of disciplinary action are:

### **1. Formal Oral Warning:**

This should normally be issued if: it is considered that the conduct of an employee has fallen below an acceptable standard and the member of staff has committed a minor offence.

Where an oral warning is issued this will be recorded in writing by the manager concerned a copy will be placed on his/her personal record within the Human Resources Division. A formal oral warning will normally lapse 6 months after issue.

### **2. Written Warning**

This should normally be issued if:

- There is no improvement in conduct about which the employee has previously been warned; **or**
- Another instance of misconduct has occurred during the currency of a previous warning; **or**
- Misconduct is confirmed which is more serious than justifying an oral warning.

Where a written warning is issued to the employee a copy will be placed on his/her personal record within the Human Resources Division. A written warning will normally lapse 12 months after issue.

### **3. Final Written Warning**

This should normally be issued if:

- a written warning has already been issued and another instance of misconduct has occurred while it is current; **or**
- there is no improvement in the conduct about which the employee has previously been warned; **or**
- the conduct is of such seriousness that a Formal Oral Warning or Written Warning are not appropriate but would not justify dismissal.

Where a Final Written Warning is issued to the employee a copy will be placed on his/her personal record within the Human Resources Division. A final written warning will normally lapse 18 months after issue.

## **D. Dismissal**

This will normally occur if:

- an allegation of Gross Misconduct (see paragraph 1.3 of this Annex) is found to be proven; **or**
- there is no improvement in the conduct within the specified period which has been the subject of a Final Written Warning; **or**

- another instance of misconduct has occurred during the currency of a previous warning and a final written warning has already been issued.

Where a member of staff is dismissed they will receive a written statement of the reasons for their dismissal, the date on which the employment contract will end, payment of any outstanding annual leave and notification of the right of appeal. Where dismissal arises from accumulative misconduct the appropriate period of notice or payment in lieu will also be given.

Should the Hearing Panel considering dismissal decide that, in light of all the circumstances, dismissal is not warranted, an alternative to dismissal may be imposed in the form of extending the period of the existing Final Written Warning for a further 12 months, exceptionally demotion to a lower graded role, disciplinary transfer to another role or loss of seniority.

### **Gross Misconduct**

Some acts termed Gross Misconduct are so serious in themselves or have such serious consequences that they may call for a dismissal on the first offence. Any dismissal for Gross Misconduct will take immediate effect once the decision has been made and the employee will not be entitled to any notice period regarding the termination of his/her employment. A list of some examples of gross misconduct is at Annex A.

### **Expired Warnings**

Disciplinary action taken will normally be disregarded for disciplinary purposes after a warning has expired and a decision to dismiss cannot be based on an expired warning. There may however be occasions where the existence of such a warning could impact on a decision to dismiss e.g. where an employee's conduct is satisfactory throughout the period a warning is valid, but ceases to be satisfactory very soon thereafter.

### **Withholding of Increments**

A formal written warning as outlined at B & C in paragraph 1.1 of this Annex will normally be accompanied by the withholding of incremental progression (where the employee is eligible for progression) for the period during which the warning is current, unless this is deemed inappropriate by the Panel/Hearing Manager hearing the case. Incremental progression, where it is due, will resume on the 1st August following the date on which the warning ceases to be current. If the withholding of an increment is overturned on appeal, it will be reinstated and pay backdated.



## **Annex F – Appeals Procedure**

### **1. Principles Governing Appeals**

1.1 Appeals must be submitted in writing to HR, no later than five working days after receipt of the decision in writing. The formal action as a result of a decision taken under the Procedure will remain in force unless or until it is modified as a result of the appeal.

1.2 Appeal Hearings may be a review of the disciplinary decision or sanction or a re- hearing depending on the grounds of the appeal. Employees must be specific about the grounds of an appeal as these will form the agenda for the Appeal Hearing and may determine who should be present. If an appeal is submitted on the basis of seeking a re-hearing this must be clearly stated. Appeals may be raised on grounds including:

- *Procedure* – a failure to follow Procedure had a material effect on the decision
- *The Decision* – the evidence did not support the decision reached by the Panel
- or Hearing Manager
- *The Penalty* – was too severe given the circumstances of the case
- *New Evidence* – which has come to light and was not available at the hearing.

1.3 Appeals will be heard by a panel of members of staff appointed who will not previously have been involved in the case. They will be appointed by HR. The Appeal Panel will be advised by an HR who will also take notes.

1.4 Any objections to the panel members appointed to hear the Appeal should be made to HR, outlining reasons for the objection within three working days of notification.

1.5 Arrangements will be made for appeals to be heard as soon after an appeal has been lodged as is reasonably practicable.

1.6 The employee should be given a minimum of ten working days' advance notice of the date fixed for their Appeal.

1.7 The employee has the right to be accompanied to the Hearing by a companion. The employee may wish to call and present witnesses at the Hearing. If the employee wishes to do this, they should inform HR in writing of an intention to do so. This written notice should be received by HR at least seven working days ahead of the scheduled hearing date and include the names of any proposed witnesses to be called along with a brief explanation as to their relevance with regards to the matters to be considered by the Appeal Hearing. The Chair of the Appeal Panel is entitled to query the purpose of any witness being called and may restrict the number permitted, where in his/her view there will be no additional value or insight added by their presence.

### **2. Appeal Hearing Procedure**

2.1 At the Appeal Hearing the Chair of the Appeal Panel will explain the purpose of the meeting. He/she will outline the process to be followed at the Hearing, how it will be conducted and the actions open to the Appeal Panel depending upon the evidence they hear. The Manager who made the decision against which the appeal is being heard should, if requested, attend the Appeal Hearing and may outline the reasoning behind the original decision.

2.2 The employee will be asked to explain the grounds of appeal including any new matters to be introduced. The appeal hearing will take into account any relevant new evidence which either party may present and consider its significance with regards to the sanction imposed at the original Hearing. If new witnesses are called, both parties and the Appeal Panel will have an opportunity to question them. At the end of the Hearing, the employee will have an opportunity to summarise the key issues in the case. At the end of the Hearing once all of the relevant issues have been aired sufficiently, the Chair of the Appeal Panel will (after an appropriate adjournment) briefly summarise the findings of the Appeal Panel and outline its conclusions.

2.3 The outcomes possible from an appeal are:

- The Appeal is not upheld and the formal action or sanction of the original Hearing stands unchanged;
- The Appeal is not upheld but the Appeal Panel imposes a lesser sanction;
- A shortening of the period for which an extended Formal Warning remains 'live';
- The Appeal is upheld and the sanction imposed by the original Hearing is no longer applied.

### **3. Decision**

3.1 The Appeal Hearing decision will be made carefully and without undue delay. It will usually be conveyed verbally to the employee within a maximum of one working day of the Hearing.

A decision will be made to either:

- Uphold the original disciplinary decision and sanction awarded;
- Uphold the appeal and confirm that the disciplinary action will be removed from the employee's record;
- Confirm that misconduct has occurred but reduce the level of disciplinary sanction.

3.2 The outcome of the Appeal Hearing should be confirmed in writing to the employee by the Chair of the Appeal Panel no later than five working days after the decision has been conveyed verbally. Notes of the Appeal Hearing can be made available if requested.

3.3 If an appeal against dismissal is upheld, the employee shall be paid in full for the period from the date of dismissal and continuity of service will be maintained.

3.4 The decision of the Appeal Panel is final.