

DISCIPLINARY POLICY AND PROCEDURE

**FOR DEALING WITH MISCONDUCT AND POOR
PERFORMANCE**

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Section A: Policy

1 Policy statement

- 1.1 The Standards Board for England (Standards for England) is a strategic regulator, leading in the field of standards, conduct and values for those participating in local public life in England. At any one time, there are over 80,000 people participating as elected members in local democracy in England. To be an effective regulator we must ensure that the performance, conduct and behaviour of our employees meets the highest standards at all times. Our disciplinary policy and procedure reflects this, together with our code of conduct for employees (appendix 1) and the way we aim to conduct our business. The Code of Conduct policy sets out in detail the standards expected from all our employees. Our performance management framework sets out how performance will be managed in the workplace.
- 1.2 Our aim through operating this policy and procedure is to ensure consistent and fair treatment for all, in line with the principles of natural justice and the Standards Board's Diversity and Equal Opportunities policy.
- 1.3 Line managers are responsible for monitoring the conduct or performance of their employees, making clear the standards of conduct, behaviour or performance that is expected. Line managers should give feedback, direction, help and encouragement to employees to help them reach the required standards. Providing the necessary induction, training and coaching is vital in ensuring employees are competent in their role. As line managers are usually best placed to detect any possible misconduct or performance problems, they are normally responsible for considering and taking action as appropriate, given the facts of the case, and liaising with Human Resources (HR), as necessary. The Standards Board is committed to providing relevant training to line managers to enable them to effectively manage misconduct and performance issues.
- 1.4 The policy is supported by a procedure: which sets out how conduct issues are managed to ensure all employees achieve and maintain high standards of conduct and attendance, and deals with issues of poor performance. For both, there is an emphasis on dealing with matters informally at first and for resolving matters in a timely manner.
- 1.5 Standards Board's disciplinary policy and procedure is based on the revised ACAS Code of Practice on Disciplinary and Grievance Procedures and The ACAS Guide to discipline and grievances at work which took effect from 06 April 2009.

2 Scope of policy

- 2.1 The policy applies to all permanent and fixed term employees of the Standards Board, irrespective of length of service or status and applies to conduct and poor performance issues. Matters relating to an unsatisfactory sickness record or ill health, are dealt with under the Sickness Absence Policy and Procedure.
- 2.2 The Standards Board and the PCS union have worked together to produce this policy, as we share a commitment to provide a clear conduct framework for all employees.

3 Principles

- 3.1 The policy has the following principles and features:
 - Cases of minor misconduct and performance are usually best dealt with informally by line managers, through a discussion, direction, advice or training.
 - Matters should be dealt with speedily and kept confidential; meetings and making decisions should not be unreasonably delayed by any party.
 - In dealing with matters of poor performance there is an emphasis of a joint problem solving approach between employee and the line manager. However, this policy is one of the mechanisms that can be used when other performance management techniques have failed.
 - The procedures in this policy are provided to ensure consistency and transparency in handling situations.
 - The policy is based on the principles of fairness, natural justice and reasonableness. For example the employee will be advised of the nature of the allegations, together with supporting evidence in advance of any hearing. They will be given the opportunity to challenge the allegations and state his or her case before any decision is made at a disciplinary hearing, and similarly with appeal decisions.
 - Employees will be provided, where possible, with written copies of evidence and relevant witness statements in advance of the disciplinary hearing.
 - At all stages of the formal procedure the employee will have the right to be accompanied by a trade union representative or work colleague. In most cases investigations will be carried out by the employee's line manager (known as the investigating officer).

However in certain circumstances as agreed by senior management another manager may be appointed or the Standards Board may decide to bring in an external consultant to carry out or support the investigation.

- The investigating officer should look for evidence that supports the employee's case as well as evidence against.
- Any suspension will be on full pay and is not considered a disciplinary action.
- No disciplinary action will be taken against an employee until the case has been fully investigated.
- No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the penalty will be dismissal without notice or payment in lieu of notice.
- Disciplinary penalties are imposed only after careful investigations and where there is a reasonably held belief that the employee committed the act in question.
- All employees have the right to appeal against any disciplinary action.
- The procedure may be implemented at any stage if the employee's alleged misconduct or performance warrants this.
- Disabled employees have the right to reasonable adjustments under the Disability Discrimination Act. In arranging any meetings, reasonable adjustments may be considered to accommodate the needs of a person with disabilities.
- This policy will not discriminate on the grounds of sex, gender reassignment, marital or civil partnership status, race, sexual orientation, religion or belief, disability, age or pregnancy and maternity.

4 Definition and examples of misconduct, gross misconduct and poor performance

4.1 Misconduct

4.1.1 For the purposes of this policy, misconduct consists of unacceptable conduct or behaviour which could also be regarded as: -

- Improper.
- Breaching the Standards Board's policies and procedures and/or the Code of Conduct for employees (see appendix 1).

4.1.2 It is not possible to legislate for all types of conduct and behaviour which could result in disciplinary action. Examples of the kind of misconduct that might lead to disciplinary action or eventual dismissal include:

- Persistent lateness or poor timekeeping.
- Frequent uncertified sickness absence for which there appears to be no underlying medical cause.
- Failure to follow Standards Board's absence reporting procedure.
- Unauthorised absence from work.
- Carelessness in the use of Standards Board's equipment.
- Insufficient regard for the health and safety of others including failure to use health and safety equipment provided for specific tasks.
- Failure to follow correct procedures.
- Failure to carry out a reasonable instruction.
- Verbal abuse.
- Harassment (including that of a sexual or racial nature).
- Bullying.
- Discrimination of a racial or sexual nature.
- Discrimination towards a person with disabilities.
- A serious breach of confidentiality.
- As a result of conduct or behaviour identified during a whistle blowing investigation
- Breaches of Standards Board's Code of Conduct;
- Unauthorised use of Standards Board's IT system; and
- Unauthorised use of software
- Misuse of Standards Board's facilities.

4.1.3 The above list is for illustrative purposes and is by no means exhaustive. If an employee informally raises concerns about another employee's action in relation to any of the above, but does not wish to make a complaint, the Standards Board may have legal obligations to conduct a disciplinary investigation regardless. This will be explained to the complainant.

4.2 Gross misconduct

4.2.1 This is misconduct that is so serious that as a result the employment relationship and contract could be destroyed, making continuing working relationships, trust and confidence in that individual impossible.

4.2.2 The following are examples of gross misconduct; this list is illustrative and is not exhaustive:

- Unlawful contact - unlawful assault on, or serious threat of assault to colleagues; fighting; serious acts of sexual or racial harassment.
- Theft – intentional removal of Standards Board property from the Standards Board's premises without prior authorisation of the appropriate manager; unauthorised possession of personal belongings owned by an employee, visitors or contractors.
- Fraud - any deliberate fraud or attempt to defraud Standards Board including the misrepresentation of entitlement of expenses, timesheets or allowances.
- Corruption - the receipt of money or goods, favours in respect of services rendered, e.g. from contractors in anticipation or recognition of receiving orders for goods.
- Failure to disclose a conflict of interest - any known failure to disclose in writing any direct or indirect interest in any transaction, arrangements or contract entered into or proposed to be entered into by the Standards Board including any such interests held by a person connected to an employee.
- Deliberate damage - deliberate damage to Standards Board's property or the property of other members of staff, visitors or contractors.
- Breaches of confidentiality - wilful disclosure of information of material that is of a confidential nature.
- Negligent behaviour - any action or failure to act which seriously threatens the health or safety of fellow colleagues, visitors or contractors.
- Refusal of a reasonable management request - where the employee fails to give a satisfactory reason for carrying out a reasonable request given by their line manager or more senior manager.
- Illegal activities outside work - in the event of an employee being investigated for, and/or charged with, a criminal offence which has been committed either inside or outside of work, the Standards Board will consider whether or not the alleged offence has any implications on the person's continued employment with Standards Board, e.g. if the alleged behaviour is a violent or dishonest nature, or an act of sexual impropriety. See section 5 on criminal offences for further guidance.
- Incapability to perform through the use of drink or drugs - incapability to perform normal duties owing to the consumption

of alcohol or drugs. Please refer to the Substance Abuse Policy for further guidance.

- 4.2.3 Where an individual is found to have committed an act of gross misconduct, the penalty is likely to be summary (immediate and without notice) dismissal. The individual's employment will cease on the day of dismissal. Salary and other benefits will also cease on that day and the individual will not be entitled to a payment in lieu of their notice period.

4.3 Poor performance

- 4.3.1 Poor performance is where an employee is incapable of meeting the requirements of the job. An assessment of this is made with reference to the skill, aptitude, competence, knowledge and ability reasonable expected of that employee performing at a satisfactory level.
- 4.3.2 All employees are contractually obliged to perform to a satisfactory level of performance. Employees are responsible for taking whatever action is necessary to help improve their own performance, this could be through informal action (see 4.3.3). An employee who is not performing to a satisfactory level may be subject to this policy and procedure. In line with our performance review process, this may be where they are assessed as a "poor performer". Depending on what support had been provided then it may be possible at this stage to go directly to the formal part of the procedure (rather than commence the informal procedure).
- 4.3.3 Examples of informal action that could improve performance include extra training, setting targets, closer supervision and monitoring, and changes to the way a job is performed. This will be carried out in a supportive manner by the line manager.

5 Dealing with criminal offences

- 5.1 Line managers must not involve the police in any case of alleged misconduct without first consulting Human Resources (HR) and an appropriate member of the senior management team. Where there are reasonable grounds for believing that a criminal offence may have been committed, the police will be called in by the Chief Executive, and may search premises, individuals and personal property under various statutory powers of search.
- 5.2 Where a criminal offence is suspected e.g. fraud, line managers must take particular care not to alert those under suspicion or to hinder any subsequent police enquiries.
- 5.3 Employees have every right to contact the police if they are the victim of a criminal offence whilst on official duty. If they do so, they should

notify their line manager in the first instance. The Whistleblowing Policy also sets out guidance on referring potentially criminal matters.

- 5.4 Employees that are charged or convicted of a criminal offence, will not automatically be either dismissed or subject to a disciplinary investigation. The line manager will consider whether the employee's conduct or conviction merits action because of its employment implications. Where a disciplinary investigation is deemed necessary, then consideration should be given, for example, as to whether the offence:
- Breaches the mutual trust that must exist between employer and employee.
 - Makes them unsuitable for the work at their level of responsibility; or as determined by their job description and/ or
 - Is likely to impair the business of the Standards Board..
- 5.5 Where the employee is not be available for work as they are in custody or on remand, but the allegation or conviction does not justify disciplinary action, then the line manager in conjunction with HR should decide whether the employee's job can be left open and for how long. An appropriate investigation should take place to establish this.

6 Employees who are trade union representatives

- 6.1 If the employee subject to disciplinary action is a trade union representative, the line manager should discuss the case with a full-time official of the union, after obtaining the employee's agreement to do so.

7 Role of HR representatives

- 7.1 HR will advise line managers on the process and attend formal meetings to provide advice on process and take notes. The HR representative is responsible for supporting the line manager in ensuring that each stage of the procedure is completed within the time limits set out below.

8 Role of line manager

- 8.1 In most circumstances, the employee's line manager is responsible for informing the employee of disciplinary action being taken, conducting the investigation and presenting to the hearing. In addition they are responsible for producing the investigation report and keeping the individual and witnesses (where applicable) updated of the progress on the investigation. This role is referred to throughout the policy and procedure as the investigating officer.

- 8.2 Training will be provided to line managers to help them achieve positive outcomes, where possible reducing the need for disciplinary action. Where line managers are involved in operating disciplinary procedures they will be trained appropriately.

9 Mediation

- 9.1 In certain circumstances an independent third party or mediator can be used to tackle underlying relationship issues by means of mediation rather than impose a disciplinary sanction. The mediator would be engaged not to judge but to lead the process of seeking to resolve the problem, not to decide the outcome.
- 9.2 Although mediation is often perceived as a form of early intervention in disputes, it can also be used to rebuild relationships after an employee has undergone a disciplinary process.

10 Dealing with grievances

- 10.1 If a grievance is raised during the course of a disciplinary investigation/ process, the disciplinary process may be temporarily suspended in order to deal with the grievance. Where they are related it may be appropriate to deal with the matters concurrently, usually be the same investigating officer and hearing officer.

11 Recording and monitoring

- 11.1 Line managers are responsible for recording any informal meetings or discussions involving conduct or performance issues for the purpose of future reference. A copy of all notes should be given to the employee.
- 11.2 Records should be kept by HR on any disciplinary case dealt with (with exception of allegations that don't go beyond the investigatory stage).

This will include:

- The complaint/allegations against the employee.
 - The employee's defence.
 - the findings made, actions taken and the reason for actions
 - Whether an appeal was lodged.
 - The outcome of the appeal.
 - any grievances raised during the disciplinary procedure
 - Notes of any formal meetings.
 - Details of the poor performance.
 - Supervision records and performance review records .
- 11.3 All records will be treated as confidential and kept no longer than necessary in accordance with the Data Protection Act 1998. Individuals will have the right to request and have access to certain

personal data. Employees will be given copies of meeting records. In certain circumstances (for example to protect a witness) the employer might withhold some information.

Section B: Procedure for dealing with misconduct or poor performance

1 Informal action for dealing with misconduct or poor performance

- 1.1 If the line manager decides that an informal meeting is appropriate, the line manager will meet with the employee in private to discuss the matter. It should be a two-way discussion, aimed at identifying shortcomings in conduct/performance and encouraging improvement which must be sustained. Criticism should be constructive, with the emphasis being on finding ways for the employee to improve. The employee should be given the opportunity to provide a response to the issues raised as it may become clear that there is no problem. The provision of additional training and development should be discussed as it may support improvements in conduct. The line manager is responsible for putting together an appropriate training plan which the employee should then work to.
- 1.2 Where improvement is required this should be clearly stated and the employee should understand what needs to be done, and how their conduct/performance will be reviewed and over what period. This should be confirmed in writing in a brief note to the employee including any agreed informal action and this should be reviewed over a specified period.
- 1.3 It is important that the discussion remains informal and does not become formal disciplinary action as in those circumstances the employee has the right to be accompanied; for informal meetings there is no right. However, in some circumstances this will be considered and agreed by management where it will assist the situation.
- 1.4 The employee should be told in writing that the possible consequences of no or insufficient improvement in conduct/performance will be the instigation of formal disciplinary action.
- 1.5 If during the meeting it becomes clear that the matter is more serious, the line manager should adjourn the meeting and the employee should be informed that the matter will be dealt with under the formal disciplinary procedure.
- 1.6 The services of an independent mediator may be used during the informal action stage, where appropriate and in line with section A, para 9.

2 Formal disciplinary action for dealing with misconduct or poor performance

Where informal action has not produced the desired outcome or where the conduct/poor performance is so serious that informal action is not appropriate, then the line manager should instigate formal disciplinary action.

2.1 Informing the employee of a formal disciplinary action

2.1.1 Once it has been decided that formal disciplinary action will take place, the line manager will meet with the employee and verbally notify them of the action to be taken. Where it is not possible to meet with the employee then a confirmatory letter should be sent as soon as practicable.

The employee should be informed of the following:

- That formal disciplinary action will take place due to misconduct or poor performance.
- That the line manager will take on the role of investigating officer (unless another manager is appointed – in line with appendix 2)
- That this will involve carrying out all the necessary investigations without unreasonable delay to establish the facts of the case of misconduct or poor performance.
- That in most cases the aim is to complete the investigation within two weeks. However, this will depend on the complexity of the case and availability of potential witnesses and evidence. In some cases investigations will taken longer and the investigating officer will notify the employee if this is likely to be the case.
- As part of the investigation, the employee will be required to attend an investigatory meeting (sometimes referred to, by ACAS as a fact finding meeting) with the investigating officer. The investigatory meeting will not by itself result in any disciplinary action. The investigating officer will decide once the disciplinary investigation has been completed whether there is a case to answer at a hearing.
- If the investigation determines that there is no case to answer, the case will be dismissed.
- If it is apparent that formal disciplinary action is needed then it will be dealt with at a separate formal meeting at which the employee has the right to be accompanied.
- Where possible the name of the proposed hearing officer and the date of the investigatory meeting will be given to the employee. In the event of the hearing officer or the date changing, then the individual will be informed of the changes as soon as practically possible with the reasons for the change.
- The details of their right to be accompanied at all meetings during the process including the investigatory meeting and any subsequent

hearing will be provided. This is in line with the rules contained in section 7.

- That in cases of potential gross misconduct, the employee will also be informed that, if substantiated, the disciplinary action could lead to summary dismissal.
- That the line manager will be responsible for managing the process and keeping the employee updated on progress.

2.1.2 This information will then be confirmed in writing and sent to the employee within two days of being informed verbally of the formal disciplinary action that is to be taken. The employee will also be given a copy of this document (the Standards Board's Disciplinary Policy and Procedure).

2.2 Suspension

2.2.1 In some cases, suspension from duty may be considered necessary. Suspension should take place after careful consideration of all the circumstances. The authority to suspend an employee is in line with appendix 3. When an employee is suspended the terms of the suspension will be explained to the employee. Suspensions will be on full pay and should be as brief as possible and in any event up to a maximum period of one month. If the suspension is likely to exceed one month, for example due to the complexity of the investigation or if requested by the police as the matter is under criminal investigation, then permission to continue the suspension should be obtained from the Chief Executive, providing a full justification for the delay.

2.2.2 Suspension is not an assumption of guilt or a disciplinary sanction in itself.

It can be used for following situations:

- where relationships have broken down
- the misconduct is considered potentially gross misconduct
- where there are risks to an employee's or the Standards Board's property
- or where there are reasonable grounds to consider that evidence has been tampered with, destroyed or witnesses pressurised.

2.3 Conducting the investigatory meeting

2.3.1 The purpose of this meeting is for the investigating officer to establish the facts of the case and to investigate the circumstances surrounding the alleged incident(s)/misconduct or the poor performance. Disciplinary action is not considered at this stage. The investigating officer should interview all relevant parties in relation to the case and

where necessary take witness statements. They may examine written records and information.

2.3.2 If the investigating officer decides following completion of the investigation that there is a case to answer, then the employee will be notified that the matter will be considered at a disciplinary hearing. In such cases, the investigating officer should produce a disciplinary report which should contain all necessary facts and findings including other relevant documents as a bundle of attachments for example sickness records, witness statements, examples of work produced. Written statements may be included from witnesses from outside the organisation who are not able to attend the hearing or when the absence of a witness would cause considerable delay. The report should provide sufficient information about the allegations of misconduct or poor performance and its possible consequences, to enable the employee to prepare to answer the case at a disciplinary hearing. It should deal with facts not opinions but conclusions can be set out in the report based on the evidence.

2.3.3 At this meeting the employee would not normally be accompanied.

2.4 Conducting a disciplinary hearing

2.4.1 The investigation report (including appendices) is sent to the employee, their representative (where applicable), the hearing officer and the HR representative together with details of the hearing. The employee should be reminded of their right to be accompanied at the hearing. This is sent to all parties five working days before the hearing.

2.4.2 The employee can present their own evidence which should be sent to HR two working days before the hearing. They may be able to call witnesses and the details of their witnesses should also be provided to HR two working days before the hearing. The investigating officer may also propose to call witnesses as appropriate at the hearing. This will be set out in the investigation report.

2.4.3 It will be at the discretion of the hearing officer to determine which witnesses are called to the hearing. This will depend on their relevance to the facts of the case.

2.4.4 Where an employer intends to call relevant witnesses they should give at least two days advance notice that they intend to do this. This will provide the employee the opportunity to prepare relevant questions to ask the witness at the hearing.

2.4.5 The hearing officer may consider the use of an interpreter or facilitator if there is understanding or language difficulties.

2.5 Who should attend the hearing?

- 2.5.1 The disciplinary hearing will be conducted by the hearings officer, normally the line manager of investigating officer unless in cases where dismissal could be result the hearing officer should be in line with the table shown at appendix 2. Every effort should be made by all parties to attend the hearing. Also in attendance will be an HR representative to take a note of the meeting and to advise on procedure.
- 2.5.2 At the hearing the investigating officer should present their report and evidence, and call witnesses as required. The employee should then be allowed to set out their case and answer any allegations that have been made. The employee will be able to ask questions, present their own evidence and call witnesses in line with 2.4 above.
- 2.5.3 If the employee's representative is unable to attend the hearing date, then an alternative date within five days of the original date will be arranged. If the representative is still unable to attend, then an alternative representative should be considered by the employee. If the employee cannot attend for circumstances beyond the control of the individual for example illness, then an alternative date may also be arranged. The hearing officer is not precluded from considering a case in the absence of the employee where, without good reason and where following a rearranged hearing as detailed above, the employee fails to attend the hearing. Should this occur, the employee will be notified of the new date and be informed that if they fail to attend the hearing will proceed on the basis of the information available. They will also be offered the opportunity to submit a written statement of their case.

2.6 During the Hearing

- 2.6.1 The hearing officer opens the hearing by welcoming all parties and making introductions, explaining the roles of all parties present ie the employee's accompanying colleague/representative, the investigating officer, the hearing officer, and HR representative. The hearing officer should explain the purpose of the hearing ie to consider whether disciplinary action should be taken in accordance with the Standards Board's policy, and explain how it will be conducted (see appendix 4 for suggested outline of hearing).
- 2.6.2 The hearing officer will also inform the employee of the precise allegations that are to be considered and remind the employee of their right to be accompanied in accordance with the policy.

2.7 Deciding the outcome

- 2.7.1 Once the hearing has been completed, the hearing officer should adjourn with the HR representative to give full consideration to all the

evidence and to decide whether any disciplinary penalty should be imposed. The role of the HR representative at this stage is to advise the hearing officer on procedural issues and the consistency with other disciplinary penalties within the Standards Board.

- 2.7.2 It is essential that the proper test be applied when judging cases of alleged misconduct or poor performance. That test is one of the balance of probability and not one of proof beyond reasonable doubt. Where facts are disputed, the hearing officer must decide, on the balance of probability, what version of the facts are true. The HR representative is available to advise the hearing officer in their decision-making.
- 2.7.3 In cases involving poor performance, the hearing officer must relate any formal warning given to any objectives and competencies which have not been met satisfactorily. It will be assumed that any objectives or competencies not mentioned as part of the warning are being demonstrated at a satisfactory level or better.

2.8 Consideration of penalty imposed

- 2.8.1 Before deciding what the appropriate action will be, a number of factors must be considered, including:
- The nature and gravity of the allegations(s).
 - The individual's past record.
 - Any other special circumstances which might reasonably have affected the situation.
 - Whether Standards Board's rules have been breached.
 - What penalties have been imposed in similar cases in the past.
 - Whether other employees conduct or poor performance is similar and what has been done in this regard.
 - The mitigation (if any) for the misconduct/poor performance put forward by the employee.

However, each case should be viewed on its own merits and relevant circumstances may be taken into account for example health and domestic circumstances, justifiable ignorance on the part of the individual, inconsistent treatment in the past.

- 2.8.2 The hearing officer should consider the decision, with the aim of reconvening as soon as possible that day. The time of the reconvened hearing must be communicated to the employee at the time of the adjournment. In some situations it may not be possible to reconvene on the same day. The employee will be notified if this occurs.
- 2.8.3 On returning to the hearing, the hearing officer should summarise the points that have been covered, announce their decision and reasons for that decision and where applicable detail the disciplinary penalty

being imposed (see section 3) and the reasons for that action. The appeal process should also be explained (see section B, para 5).

3 Levels of disciplinary action used

In making a determination, the hearing officer will need to consider all the information presented at the hearing. Where a disciplinary sanction is to be imposed the following penalties may be used:

- First formal (verbal) warning.
- Second formal stage (written) warning.
- Third and final stage (written) warning.
- Dismissal – with or without notice (actions short of dismissal may be considered eg transfer to another department and/or duties.
- Deductions from pay for any period of unauthorised absence from work, if appropriate.

3.1 First formal stage (verbal) warning

In the case of minor misconduct or poor performance, the employee will be given a verbal warning. After the disciplinary hearing, the hearing officer should make it clear to the individual the following:

- That they are being given a first formal stage (verbal) warning.
- The nature of the misconduct or poor performance and the change in behaviour required within a timescale.
- Any support or training that the organisation will provide to assist the employee.
- That continued misconduct or poor performance would lead to disciplinary action of greater severity.
- That they have the right to appeal as set out in section B, para 5.

3.1.1 Although this is a 'verbal warning', the details will still be confirmed in writing to the employee and a record of it, with any hearing notes and evidence, will be placed on the individual's personal file. A first stage (verbal) warning will normally remain active for a period of six months, but this period could be longer depending on the situation, that is at the discretion of the hearing officer as advised by the HR representative. Any further disciplinary action taken during this period will result in the application of next stage of the process.

3.2 Second formal stage (written) warning

3.2.1 In the case of a more serious misconduct or poor performance or if the employee's conduct or performance remains unsatisfactory during a 'live' verbal warning, the employee will after a further hearing, receive a written warning. The warning will make clear:

- That the individual is in receipt of a second stage (written) warning

- The nature of the misconduct or poor performance.
- What the standard of conduct or performance is expected of them is for the future.
- That continued misconduct or poor performance would lead to disciplinary action of a greater severity.
- That they have the right to appeal as set out in section 5.

3.2.2 A letter summarising the disciplinary hearing and its outcome will be sent to the employee. A copy of this letter and any hearing notes and evidence will be placed on the individual's personal file. A written warning will normally remain active for a period of 12 months, but this period could be longer depending on the situation; this is at the discretion of the hearing officer as advised by the HR representative. Any further disciplinary action taken during this period will result in the application of the next warning level.

3.3 Third and final stage (written) warning

3.3.1 A final written warning is only one step away from dismissal, so it is appropriate for cases when:

- An instance of misconduct is so serious that only a final warning is appropriate.
- The individual's conduct or poor performance has failed to meet the standards as set following the issuing of a written warning during the live period.
- The individual would have been dismissed but for extenuating circumstances.

3.3.2 After the disciplinary hearing the following will be made clear:

- That the individual is in receipt of a final written warning.
- The nature of the misconduct or poor performance.
- That continued misconduct or poor performance will lead to disciplinary action of greater severity.
- That they have the right to appeal as set out in section B, Para 5.

3.3.3 A letter summarising the disciplinary hearing and its outcome will be sent to the employee and a copy of this letter and any hearing notes and evidence will be placed on the individual's personal file. A final written warning will normally remain active for a period of 12 months, but this period could be longer depending on the situation; this is at the discretion of the hearing officer as advised by the HR representative. Any further disciplinary action that is taken during this 12 month period could result in dismissal.

3.4 Stage Four - Dismissal

- 3.4.1 Dismissal for misconduct or poor performance will happen in the following circumstances:
- where the employee has committed an act(s) of gross misconduct
 - where a final written warning has failed to bring about a satisfactory improvement in conduct or performance.
- 3.4.2 In cases of poor performance, if as an alternative to dismissal an alternative post is available then the hearing should be re-convened and the alternative post offered to the employee. The post will be subject to a three-month trial. There will be no corresponding protection of pay should the post be at a lower salary. If the three-month trial fails or if the employee refuses the post, then the hearing officer will confirm the dismissal.
- 3.4.3 The individual will be given a letter stating the reason for dismissal and the date on which the employment will terminate. The letter will contain details of the right of appeal in line with section, para 5.
- 3.4.4 The Standards Board reserves the right to make a payment in lieu of notice where it believes it is not appropriate for the employee to work out a notice period.

4 After the hearing

- 4.1 The disciplinary result must be confirmed in writing to the individual within three working days of the hearing. Where the case against the employee is dismissed then this should be set out in the letter. Where the case is proved, the letter should outline:
- A description of the misconduct or poor performance.
 - In cases other than for dismissals, the improvement required in the conduct or performance and the way in which this will be measured.
 - The period of time given for improvement and the dates of any reviews.
 - The disciplinary penalty and how long it will remain in force.
 - The likely consequences of further misconduct or poor performance.
 - The individual's right to appeal (as set out in section B, Para 5).
- 4.2 If it is decided following the hearing that no disciplinary action should take place, the notes of the investigation and other relevant paperwork will be kept on the individual's personnel file for six months and then destroyed. During this period, it may be referred to again only if there is a reasonable belief that there is clear pattern of behaviour which could then warrant a further disciplinary investigation.

- 4.3 Where a warning is spent, it will be disregarded for any future disciplinary purposes, although the documentation relating to the warning will be retained on the individual's personal file. In certain situations the information may be used to demonstrate a pattern of behaviour which could provide evidence that a situation is more likely or not to have happened, and as such explain why a particular level of sanction is being used.

5 Appeals procedure

- 5.1 Where the employee feels that the disciplinary action taken against them is wrong or unjust they can appeal against the decision. This is provided that the following requirements are met:

- They appeal within five working days of receipt of the letter confirming the disciplinary action.
- The appeal should be put in writing to a member of the HR team (If band 5 or above – the HR manager).
- The letter should clearly outline the grounds for their appeal, which may be due to:
 - Undue severity or inconsistency of the penalty.
 - New evidence.
 - Alleged procedural irregularities.

- 5.2 If no appeal is lodged in writing within five working days of receipt of the notification, then the decision will stand.

6 Appeal Hearing

- 6.1 An appeal hearing should be arranged where possible, within five working days of the appeal letter being received by HR. The appeals hearing officer will usually be a more senior manager than the original hearing officer and in cases of dismissal will be in line with the schedule as outlined in appendix 2. Where possible the appeal should be dealt with by a manager who has not previously been involved in the case. The HR representative will attend the appeal hearing to take notes and advise on procedural issues.

- 6.2 In order that an appeal may be heard promptly and within five working days of its receipt, the individual must make themselves available at any reasonable time (subject to the rules of an accompanying colleague as set out in section 7). Where this is not possible the appeal may be heard in their absence using their written letter of appeal.

- 6.3 Depending upon the grounds of the appeal, the appeal hearing will either be a re-hearing or a review of the disciplinary sanction. This will

be at the discretion of the appeal hearing officer based on the letter of appeal. The individual has the right to be accompanied at the appeal hearing. At the appeal hearing:

- The individual should restate the reason for their dissatisfaction at the outcome of the disciplinary hearing and the grounds on which the appeal has been made.
- The individual should then present any factual evidence which supports their case.

6.4 After the hearing the appeals hearing officer will consider the facts and determine whether to accept or reject the appeal. When this decision has been reached the individual will be informed verbally and then the decision will be confirmed in writing within three working days. If the appeal is successful the penalty in question may either be varied or be set aside and to be considered as to have had no effect.

6.5 At the appeal hearing the appeal-hearing officer should introduce those present and explain their roles. They should explain the purpose of the appeal hearing and how it will be conducted; ask the employee why they are appealing; consider new evidence that has been introduced and ensure the employee and the original hearing officer (or investigating officer) are given an opportunity to comment on it. Once all information has been discussed, the appeal hearing officer will summarise what they have heard and adjourn the appeal hearing to consider the decision.

6.6 Options for appeal hearing officer are as follows:

- Overturn the original decision if it becomes clear that it is not soundly based.
- Uphold the original decision and dismiss the appeal.
- Allow the appeal in part but substitute with a lesser sanction.

6.7 The employee should then be informed of the decision. This should be on the same day and then confirmed in writing within three days of the verbal decision being given. If this is not possible due to the complexity of the case, then the individual should be informed that they will receive the decision in writing within five working days.

6.8 In the case of an appeal against dismissal the same procedure will be followed and the individual will remain dismissed (and will not receive pay) until the appeal procedure is completed. However, if the individual is reinstated then the period of service will also be reinstated and the basic salary paid for the period of service will be given.

7 Rules on allowing the employee to be accompanied

- 7.1 Employees have a statutory right to be accompanied by a work colleague, a trade union representative or an official employed by the recognised trade union where the meeting could result in a formal warning being issued, or some other disciplinary being taken or where warnings are confirmed and appeals hearing, or at an appeals hearing. An employee may ask an official from another trade union to accompany them at a hearing, regardless of whether or not they are a member of the union that is recognised by the Standards Board.
- 7.2 Employees should make reasonable requests to be accompanied. It would not be reasonable if the representative's presence would prejudice the meeting/hearing or if they have a conflict of interest or they are based in a different geographical area and there is another representative available and willing to attend the meeting.
- 7.3 It should be made clear to any employee asked to act as a representative at a disciplinary meeting or hearing that the Standards Board actively encourages their attendance and welcomes their contribution. The colleague should be advised that they are obliged to keep confidential all discussions relating to the particular disciplinary process in which they have been requested to participate.
- 7.4 Informal discussions or counselling sessions do not attract the right to be accompanied. Where it is clear that a matter may require formal disciplinary action then this should be dealt with at a meeting at which the employee would have the right to be accompanied.
- 7.5 Where an employee has a disability then a reasonable adjustment may be agreed to allow an additional companion to support the individual.
- 7.6 In all cases, the employee should inform the HR representative who they have chosen as their representative prior to the meeting/hearing.
- 7.7 At the disciplinary hearing/interview the work colleague/representative may:
- address the hearing/interview in order to put and sum up the individual's case;
 - respond on the individual's behalf to any view expressed at the hearing; and
 - confer with the individual during the hearing/interview
- 7.8 However, the colleague may not:
- answer questions on the individual's behalf;
 - address the hearing if the worker indicates that he or she does not wish the companion to do so; or

- prevent the individual from explaining his/her case or prevent any other person at the hearing from making his or her contribution to it.
- 7.9 A representative cannot be the manager of the individual, or someone who is involved in the disciplinary proceedings in any way i.e. as a witness.
- 7.10 Trade unions should ensure that their officials are trained in the role of acting as a representative. Standards Board will consider allowing time off for this training.

Appendix 1

Code of Conduct for Employees

PART 1

GENERAL PROVISIONS

Scope

- 1.1 An employee must observe The Standards Board for England's Code of Conduct whenever he/ she -
- (a) Conducts the business of The Standards Board for England;
 - (b) Conducts the business of the office to which he/ she has been appointed; or
 - (c) Acts as a representative of the Standards Board for England.
- 1.2 The Standards Board for England's Code of Conduct shall not have effect in relation to the activities of a Standards Board For England employee undertaken other than in an official capacity, except and insofar, as otherwise indicated.
- 1.3 Where a Standards Board For England employee acts as a representative of The Standards Board for England at the meeting of another public body or committee, he/ she must, when acting in that capacity, comply with The Standards Board for England's Code of Conduct, except and insofar as it conflicts with any other legal obligations to which he/ she may be subject.

General Obligations

2. An employee -
- (a) Must promote equality by not discriminating against any person and treat people with respect; and
 - (b) Must not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf, of the Standards Board for England.
3. An employee -
- (a) Must not disclose information given to him/ her in confidence by anyone, without the consent of the person authorised to give it, or unless he/ she is required by law to do so, and
 - (b) Must not prevent another person from gaining access to information to which that person is entitled by law.
4. An employee must not conduct himself or herself in a manner which could reasonably be regarded as bringing his/ her office or the Standards Board for England into disrepute.
5. An employee -

- (a) Must not, in his/ her official capacity or otherwise use his/ her position improperly to confer on or secure for any person, an advantage or disadvantage.
 - (b) Must ensure that the resources of the Standards Board for England are not used for the activities of a registered political party.
6. An employee must when reaching decisions -
- (a) Have regard to any relevant advice provided to him/ her by the Standards Board for England's Chief Executive;
 - (b) Give reasons for those decisions in accordance with the Standards Board for England's rules.
7. An employee must report to their line manager, in the first instance, any conduct by another Standards Board For England employee which he/ she reasonably believes involves a failure to comply with the Standards Board for England's Code of Conduct, in line with the Standards Board for England's Whistleblowing Procedure.

PART 2

INTERESTS

Personal Interests

8. An employee must regard him or herself as having a personal interest in a matter if he/ she anticipates that a decision upon the matter might reasonably be regarded as affecting his/ her well-being or financial position of to a greater extent than other members of the public.

Disclosure of Interests

9. A Standards Board For England employee with any personal or business interests which may conflict with their responsibilities as a Standards Board For England employee or that a member of the public might reasonably believe could influence his/ her judgment shall disclose such interests immediately to the Chief Executive, or when the interest becomes apparent.

Registration of Gifts and Hospitality

10. An employee must notify their line manager of the existence and nature of any gifts, benefits or hospitality offered, whether accepted or declined, from any relevant authority, any employee of a relevant authority or any other relevant organisation or person (for example, those who are contracted suppliers to The Standards Board for England), over the value as described in the Staff Handbook. This value may be subject to future change.

Appendix 2

TABLE OF DELEGATED AUTHORITY TO SUSPEND, DISCIPLINE OR DISMISS AN EMPLOYEE¹

WHO IS TO BE POTENTIALLY DISCIPLINED?	Employees below Band 5	Band 5 and/or directly reporting to the Chief Executive	Chief Executive
WHO IS AUTHORISED TO SUSPEND?	Head of Department in conjunction with a member of HR Team	Chief Executive (or nominee, if absent)	Board Chair (or nominee, if absent)
WHO WILL INVESTIGATE?	Line Manager supported by a member of the HR Team	A Head of Department as assigned by the Chief Executive supported by the HR Manager	Board Member supported by the HR Manager
WHO WILL HEAR THE CASE?	A more senior manager supported by a member of the HR Department	Chief Executive supported by the HR Manager	The Board chair following a hearing consisting of a panel of three Board Members, chaired by the Board Chair
WHO CAN DISMISS?	The Head of Department supported by a member of the HR Department	Chief Executive supported by the HR Manager	The Board chair following a hearing consisting of a panel of three Board Members, chaired by the Board Chair
WHO IS THE APPEAL MADE TO?	Member of the HR team	HR Manager	HR Manager
WHO WILL HEAR THE APPEAL?	Chief Executive (or an alternative Head of Department as assigned by the Chief Executive)	Board Chair (or Deputy Chair, if absent)	Deputy Chair and two Board Members, who have not been previously involved in the case

¹ This table should be used as a guide only and decisions about who investigates and hears disciplinary cases will be based on the circumstances of the particular case and the seniority of individuals involved in the disciplinary. In some cases, an investigation may be carried out by an individual who is not an employee of the Standards for England. This arrangement will be made where the investigation requires specialist knowledge or skills, or if the circumstances of the case require the investigator to be independent.

Appendix 3

SUSPENSION PROCEDURE

There may be instances where suspension with pay is necessary while an investigation is carried out. Suspension is not a form of disciplinary action and will not be regarded as an alternative to disciplinary sanctions listed at section 8.

The use of suspension (with the pay the employee would have received had he/she been at work) will not be the norm and only in cases where: -

- the action complained of/alleged requires the immediate removal of the employee from the workplace or to facilitate an investigation and a decision about whether the Disciplinary Policy is to be invoked
- this is necessary for the protection of an employee
- the employee appears incapable of undertaking the duties which he/she is required to perform (e.g. through an excess of alcohol)
- the employee is the subject of police enquiries, or criminal charges in respect of any alleged or potential criminal offence, which is relevant to carrying out the employees duties
- the conduct of the employee is a hazard to the health and safety of others
- where there are reasonable grounds for concern that evidence has been tampered with, destroyed or witnesses pressurised before the disciplinary meeting
- there are risks to an employee's or the organisation's property or responsibilities to other parties
- there is an allegation of gross misconduct against the employee
- the employee's health constitutes a danger to himself/herself or others

Suspension of pay will only be imposed after careful consideration and will not be unduly protracted. Alternatives to suspension should always be investigated, for example, moving the employee to another work area or changing hours while an investigation takes place

Suspension action may only be taken by a level of management identified in the Table of Delegated Authority (Appendix 2). In emergency situations, another officer may have to take such action in the absence of the authorised officer and in consultation with the Human Resources manager

The suspending officer will be responsible for ensuring that written confirmation of suspension is sent to the employee within 48 hours of the action being taken, stating:-

- the reason for suspension
- the estimated period for which the employee is suspended
- a date for review of the suspension

The Human Resources team must be informed of all suspensions and will monitor their duration. If no action has been taken after one week the responsible manager will review the suspension and decide whether or not it will be continued.

During a period of suspension the employee will receive their contractual pay. In the event that a suspended employee is summarily dismissed the employee will retain any pay received during the period of suspension but no further payment will be made pending or in the event of an appeal.

Where an employee falls sick during a period of suspension the normal contractual sick pay entitlements will apply, in accordance with the occupational sick pay scheme (i.e. full/half/no pay depending on the employee's entitlement). Rules concerning the submission of medical certificate will continue to apply, as if the employee were not suspended.

Where an employee wishes to take annual leave during a period of suspension, the normal arrangements for the booking of leave will apply, but the employee remains suspended from duty while on annual leave.

It may be necessary for a suspended employee to visit the Standards Board's premises for the purpose of preparing their case and/or to collect belongings. Permission to do so must be obtained from the investigating officer, prior to entry to the site.

Appendix 4

GUIDANCE ON THE CONDUCT OF DISCIPLINARY INVESTIGATIONS AND HEARINGS

1 Introduction

These guidelines are intended for use by those carrying out disciplinary investigations or hearings. They do not form part of the policy as they are only a guide.

The guidelines are designed to ensure there is a satisfactory level of consistency in the way investigations and hearings are conducted. They should be used to ensure fairness and impartiality.

2 Before the investigations begins

The investigating officer should familiarise themselves with the disciplinary policy and procedure and meet with the HR representative to ensure they understand their role and are fully briefed on the procedure that will be followed.

The investigating officer needs to decide the sequencing and structure of the investigation including how they will structure the initial investigation meeting. They should have a planned approach to the investigation.

3 Carrying out the investigation

The investigating officer is responsible for keeping the employee up to date with progress on the investigation; this is of particular importance where the employee has been suspended from work or the investigation is complicated and is taking time to complete. All investigatory meetings should be held in private.

A suggested format for the investigation report is as follows:

- Heading
- Contents page
- Introduction (purpose of the report) and details of the allegations
- Methodology for the investigation
- An account of the investigation carried out
- Summary of the breaches of conduct or poor performance (ie the allegations) and the matters that were looked at
- Conclusions based on the evidence
- Recommendations on why the matter should be presented to a hearing for consideration providing the evidence to warrant this action

- Appendices which should be number referenced sequentially through the body of the report.

It is vital that any investigation is sufficiently thorough and that any conclusions and recommendations are based on evidence.

Investigating officers need to ensure:

- That the allegations are clear and describe the alleged misconduct
- They describe what is the precise nature of the act(s) under investigation
- They describe what the individual did/said during the investigatory interview
- They describe when and where did the matters happen
- They state were there any witnesses present, if so who were they and what they said when interviewed
- Any written documentation is provided and the reason for submission is clearly set out in the report.

Witnesses should be advised that their statement/note of meetings will be disclosed to all parties. When interviewing witnesses emphasis should be made about the confidential nature of the investigation and instruct them not to discuss matters with anyone other than their chosen representative. The investigating officer should prepare a note or witness statements which should be an agreed record. A verbatim record is not required. Witness statements must be specific and should only contain information/evidence relevant to the matter under investigation. Hearsay type comments should be avoided where possible.

4 Reaching conclusions and making recommendations

Once all the relevant information has been gathered, in putting the report together, the investigating officer should consider:

- whether they have remained objective and impartial throughout?
- has a thorough investigation been undertaken?
- is the decision supported by evidence?
- can the decision be justified?
- is it clear in the report how you have carried out the investigation?

5 Conducting a hearing

The hearing officer should familiarise themselves with the disciplinary policy and procedure and meet with the HR representative to ensure they are fully briefed on the procedure that will be followed. The hearing officer should plan the structure of the hearing

Essential elements include:

- Making the necessary introductions, explaining the purpose of the hearing and describing the allegations and evidence (as detailed in the disciplinary report).
- Confirming that the HR representative is there to take notes and advise on procedure.
- Asking the investigating officer to introduce their report.
- Asking the employee to comment on the report.
- Listen to the employee and/or their representative.
- Where witnesses are called, consider what approach is appropriate. For example:
 - the manager will question the witnesses.
 - The employee may then question the witnesses.
 - The investigating officer is given the opportunity to re-question witnesses.
 - The hearing officer may question witnesses.
 - Investigating officer may be asked questions by employee/ their representative and the hearing officer.
 - The employee then responds referring to documentation and calling witnesses.
 - Any witnesses called may be questioned by the employee.
 - The investigating officer may then question the witnesses.
 - The employee is given the opportunity to re-question the witnesses.
 - The hearing officer may question witnesses
- Keeping the approach formal and polite, encouraging the employee to speak freely.
- Seeking clarification of key issues, using questions to clarify the issues and check what has been said has been understood.

- ensuring a comprehensive note is taken of the hearing. The note of the hearing should provide sufficient information to ensure the letter confirming the outcome of the hearing can be written, and providing justification and a record of any action taken. The note should include the date and the start time of the hearing, a record of who attended, details of the allegations and the supporting evidence presented, details of the responses from the employee (or their representative), the investigating officer and any witnesses.
- If there are two conflicting versions and no independent witnesses the hearing officer will have to weigh up using the evidence presented which version they believe. This would be on the “balance” of probability” e.g on balance it is more likely than not to have taken place?
- If new facts emerge, it may be necessary to adjourn the meeting to investigate them and reconvene the hearing when this has been done.
- It is possible that the hearing may not proceed smoothly - those involved may get upset or angry. If this happens, allowing the individual to regain composure before continuing. If the distress is too great the hearing officer may decide to adjourn and reconvene on another date (this does not mean that the issues will be avoided).
- In making a decision the hearing officer needs to be considering the employee’s disciplinary record as advised by the HR representative.
- Allowing the employee to sum up their case.
- Adjourn the meeting whilst the consideration is given to any subsequent action.

6. Hearing officer’s consideration

- Was the employee given full and proper training?
- Was the employee given adequate supervision?
- Is the standard of performance required clear and reasonable?
- Does the employee need additional training to enable them to perform better?
- Could any reasonable adjustments be made to the work or working environment that would enable the employee to perform better?

- Are there any additional circumstances which are hindering the employee's ability to do the job that can be helped by a reasonable adjustment where the employee has a disability?