

Disciplinary Policy and Procedure

Policy

- 1.1 Potential cases of misconduct will be investigated and where it is decided there may be a case to answer there will be a formal process to offer an employee a right of reply to allegations.
- 1.2 The informal stage of the process may lead to a management instruction setting out standards of behaviour and required future conduct. There is no right of appeal against a management instruction, and it is not part of the disciplinary procedure.
- 1.3 The formal stage of the process will involve an investigation and a meeting, referred to as a hearing. An employee has a statutory right to be accompanied at a hearing by a union official or a work colleague if they wish.
- 1.4 Suspension will be used only as a last resort when no other alternative is considered suitable – See Section 7.
- 1.5 There will be a right of appeal against the outcome of a disciplinary hearing.

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Disciplinary Procedure

1 Introduction

- 1.1 It is recognised that discipline is essential for the conduct of North Halifax Partnership (NHP) staff, and for the safety and wellbeing of staff and members of the public. Managers are expected to control and maintain standards of conduct and it is their role therefore to deal with and correct minor cases of misconduct or poor performance. This may be managed informally via discussion or counselling and on occasions may result in a letter to the individual advising on the necessary corrective action or reiterating standards of performance required. Such action may usually be taken outside of a formal disciplinary procedure. However, there may be occasions when it is necessary to resort to a formal disciplinary procedure as follows.

2 Procedure

- 2.1 NHP managers will usually be responsible for investigating allegations of misconduct and for conducting disciplinary hearings. Managers may be supported and advised by HR or others, and there may be occasions when external parties are commissioned to advise on and/or manage processes.
- 2.2 At formal meetings, usually described as hearings, the employee may be assisted or represented by a trade union official or by a work colleague. The employee should notify the manager as soon as possible if they are to be assisted or represented.
- 2.3 Where the employee is requested to attend an investigation meeting, a disciplinary hearing or an appeal hearing there is an obligation on the part of the individual to take all reasonable steps to attend that meeting. If the employee can provide a good reason as to why they would not be able to attend a meeting on the date given, then every effort will be made to re-arrange the meeting at the earliest opportunity. However, the company reserves the right to proceed with the initial scheduled meeting in the absence of the employee.

3 Informal Action

- 3.1 Minor breaches of discipline, misconduct, poor timekeeping, etc. can be dealt with informally through discussions between an employee and their line manager.

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- 3.2 This informal action may consist of management guidance or a 'management instruction' which will be confirmed in writing. These steps are an everyday part of the management process, and no formal procedure needs to be followed in respect of them.
- 3.3 In most cases it is unlikely that any other further action will be necessary as in most cases this informal approach will quickly resolve most issues.
- 3.4 Where informal action fails to resolve an issue, or where the alleged misconduct is considered too serious, then the matter will be dealt with formally under this procedure.

4 Investigation Meeting

- 4.1 It may be necessary, in some circumstances, for the manager to meet with the employee in order to clarify/seek explanations relating to potential conduct concerns before considering whether or not a disciplinary hearing ought to be arranged. At this meeting the manager will make it clear that the purpose of the meeting is to establish whether there is a case to answer in a potential disciplinary situation. The manager will present a brief outline of any allegations being made; this may include written documentation. The manager will make a judgment regarding the detail of the allegations bearing in mind issues of sensitivity and confidentiality and the possibility that there is no case to answer. At the conclusion of the meeting or very soon thereafter the manager will advise the employee whether or not the allegation is to be pursued at a formal disciplinary hearing.
- 4.2 Whilst the investigation meeting is intended to determine whether there is a case to answer, and as such precedes any formal disciplinary hearing, it is clear that allegations may be put to the employee.

5 Disciplinary Hearing

- 5.1 Prior to the hearing the manager will write to the employee advising that a hearing is to be conducted. The letter will state the date, time and place of the hearing and present as fully as possible the allegations that have been made against the employee. The letter should give at least three working days' notice of the meeting in order that the employee has time to consider their response.
- 5.2 The letter will advise that the employee is entitled to be represented or assisted by a trade union official or work colleague at the hearing.

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- 5.3 At the hearing the manager will formally put the allegations to the individual and may produce written evidence and may call witnesses. The allegations plus any witnesses may then be questioned by the employee or their representative. The employee will then be asked to answer the allegations and may produce written evidence or witnesses to support their response to the allegations. This information may then be questioned by the manager. The employee may request an adjournment at any time in order to confer with their representative.
- 5.4 NHP will not compel or require any employee to appear as a witness on an employee's behalf.
- 5.5 The hearing will consider all evidence presented. The manager will decide whether the allegation(s) made are proven or not. The standard of proof shall be on the balance of probability.
- 5.6 The format for a disciplinary hearing is shown in Appendix 1.
- 5.7 At the conclusion of the hearing, the manager will decide on a course of action, which will be either to take no further action or to take disciplinary action (see below). The manager will consider if the allegation(s) made are proven and any mitigating circumstances before communicating an outcome.
- 5.8 If for any reason the manager is unable to take that decision immediately, a decision should be made as soon as possible after the meeting. In any event, the manager will write to the employee within 5 working days of the conclusion of the hearing advising of the decision.

6 Disciplinary Action

- 6.1 The manager chairing the disciplinary hearing will decide on an appropriate disciplinary outcome. The decision as to which course of action to take will depend on the nature of the misconduct. There is no requirement to follow a sequence of warnings.

6.2 First written warning

If conduct does not meet acceptable standards, a formal first written warning will be given. This warning will remain on record for up to 9 months. The written warning will include details of:

- the reason for the warning
- the expected improvement to avoid unsatisfactory conduct in the future.

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- any help that they will be given to improve.
- the timescale for achieving improvement.
- their right of appeal and timescales to lodge the appeal.
- that any further misconduct may lead to a final written warning.

A copy of the written warning will be placed in the employee's personal file but will be disregarded for disciplinary purposes after a period of 9 months, subject to satisfactory conduct.

6.3 Final written warning

If there are serious failings with conduct or if a further incident of misconduct occurs after a first written warning has been applied, a final written warning will be issued. This warning will remain on record for up to 12 months. The written warning will include details of:

- the reason for the warning
- the expected improvement to avoid unsatisfactory conduct in the future.
- any help that they will be given to improve.
- the timescale for achieving improvement.
- their right of appeal and timescales to lodge the appeal.
- that any further misconduct may lead to may lead to a dismissal.

A copy of the final written warning will be placed in the employee's personal file but will be disregarded for disciplinary purposes after a period of 12 months, subject to sustained satisfactory conduct by the employee concerned.

6.4 Dismissal (with notice)

If following written warnings, conduct is still unsatisfactory and the employee still fails to reach the prescribed standards, or the employee commits an act of misconduct which is sufficiently serious, or gross misconduct, dismissal will normally result.

If dismissal is a sanction that is being considered, this will be made clear to the employee when invited to a disciplinary hearing.

The employee will be provided with a written confirmation of their dismissal, the date of termination, whether dismissal is with or without notice and the employee's right to appeal against the decision.

6.5 Gross misconduct (dismissal without notice)

Gross misconduct is misconduct that is so serious that it fundamentally undermines the relationship between employer and employee. It is of such

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a nature that the employer cannot reasonably continue to allow the employee's presence at the place of work. Though not an exclusive or exhaustive list, gross misconduct may be theft, fraud, fighting or physical assault, sexual offences or sexual misconduct, falsification of mileage or expense claims, malicious damage to property, serious breaches of safeguarding provisions/health and safety regulations, the persistent and wilful refusal to carry out a reasonable instruction, the commission of a serious breach of duty prejudicial to the employer's relations with the public or any wilful attempt to damage the standing or position of the employer.

If an employee is accused of gross misconduct this will be made clear when invited to a disciplinary hearing. If, following an investigation and a disciplinary hearing, it is established that the employee has committed an offence of gross misconduct during the course of their employment, the normal consequence will be dismissal without notice. In these circumstances, normally the employee will be summarily dismissed without notice and without payment in lieu of notice.

6.6 Alternative sanctions

As an alternative (or in addition) to one of the above disciplinary sanctions, the employee may be demoted with a corresponding reduction in pay or transferred to a different job, which may or may not be in a different workplace.

6.7 No formal action

In some cases, the hearing will result in no formal action and the matter will be referred back to the Informal stage of this procedure. A letter confirming this as the outcome should be sent to the employee.

6.8 Whatever form of disciplinary action is taken, the manager will confirm this in writing and the letter will advise of the right to appeal (see below).

7 **Suspension Prior to a Disciplinary Hearing**

7.1 The employee may be suspended on full pay prior to a disciplinary hearing, including during the investigation stage of this procedure. Suspension may occur in order to safeguard the personal welfare of employees, clients or members of the public or where it is necessary to safeguard the employer's assets or to allow investigations to take place without possible interference into the circumstances of a potentially serious disciplinary offence.

7.2 Suspension is a neutral act and is not intended as punitive action or an indication of guilt. However, NHP recognises that a period of suspension can

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cause distress and anxiety. Suspension will only be used when it is considered by the Manager that there is no reasonable alternative available. Wherever possible, formal suspension will take place in a formal meeting, and will be recorded in writing. The employee's initial response to the allegation(s) should be gathered in this meeting. The employee may be accompanied to the meeting by a trade union official or a work colleague.

- 7.3 All suspensions will be confirmed immediately in writing to the employee. That letter will include:
- 7.3.1 The reasons why suspension is necessary and what reasonable alternatives have been considered.
 - 7.3.2 Arrangements for reviewing the suspension – see 7.4 below
 - 7.3.3 Acknowledgment that the employee may be distressed and anxious, and a named contact where the employee can seek support.
- 7.4 All suspensions must be reviewed regularly to ensure that suspension is still a relevant and appropriate course of action. A record of the review should be maintained, and the employee should be made aware of the outcome of the review. Where the suspension is maintained, the employee should be made aware of the reasons why this remains in place. This should be confirmed in writing to the employee.
- 7.5 We draw your attention to our contractual right not to pay you full pay for suspension if you fall ill whilst suspended (medically or self-certified as such). If you are sick during a period of suspension, you will be treated as absent from work due to sickness and will be paid sickness pay, as outlined in your contract of employment.

8 Right of Appeal

- 8.1 An individual has the right to appeal against any form of formal disciplinary action taken against them. An appeal should be put in writing to the person named in the disciplinary letter within 10 working days of receipt of the letter advising the disciplinary action being taken. The appeal letter should set out the grounds on which the individual wishes to appeal. The appeal needs to be sufficiently clear to enable the initial manager whose decision is being appealed to respond at the appeal meeting. Any supporting documents or information should be provided with the appeal letter.
- 8.2 Appeals against disciplinary action are usually heard by the next higher level of management. An appeal against termination of the employment

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contract will be heard by an appeal panel comprising of the Board of Trustees who have not previously been involved in the case.

- 8.3 The appeal is usually not a rehearing of the case but is a review of the reasonableness of the decision. Determining reasonableness may include consideration of procedural irregularities or any relevant new evidence which was not available at the time of the initial meeting.
- 8.4 Arrangements for the appeal meeting should normally be notified to the individual within 10 working days of receipt of the request for an appeal. The individual should be reminded of the right to be accompanied by a trade union representative or workplace colleague.
- 8.5 At the appeal meeting the individual will be asked to present their grounds of appeal. They are able to call on witnesses.
- 8.6 The manager whose decision is being appealed will then be asked to present the reason for the decision/disciplinary action being taken and is able to call on witnesses, if appropriate. The individual and/or their representative will be able to ask questions of the manager.
- 8.7 The appeal manager/panel will be entitled to ask questions of either party or their witnesses at any time in the proceedings.
- 8.8 The appeal manager/panel will then make a decision. The appeal manager/panel may either:-
 - 8.8.1 Confirm the decision of the manager and the disciplinary action taken
 - 8.8.2 Confirm that misconduct has taken place, but institute a less severe course of disciplinary action than that taken by the manager
 - 8.8.3 Uphold the appeal. If the appeal is upheld the initial decision will be expunged from the disciplinary record of the employee. If the initial decision was dismissal, the employee will be entitled to reinstatement in their job and to be paid normal wages from the time of dismissal to reinstatement. If the employee has found alternative employment there will be no obligation on their part to return to their previous post.
- 8.9 The decision of the appeal manager/panel will be confirmed in writing to the individual within 5 working days of the date of the appeal hearing.

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9 Exclusions from the procedure

- 9.1 This procedure does not apply where dismissal arises from unsuitability to confirm appointment during a probationary period.
- 9.2 The procedure does not apply when employment is terminated as a result of redundancy or the ending of a fixed term contract.

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Appendix 1 – Agenda for a disciplinary hearing

Present

Chair/Panel Members and HR Adviser to panel
Investigating Officer and their Human Resources Representative (if available)
Employee and their Representative

Introductions

- Chair asks for introductions.
- Chair reminds employee representative they are not able to answer questions on the employee's behalf but are able to put questions or make statements.
- Chair outline's purpose of hearing including specific allegations:
 - List specific allegations
- Chair outlines procedure.
- Chair states – If either party wishes to request an adjournment, please wait for an appropriate moment, and address the request to the chair.

Preliminary

- Chair checks that all additional information/evidence has been submitted. *If additional information has been submitted late/on day, then the Chair is able to decide to admit and adjourn for all parties to read or decline to accept due to lateness. This will depend on the amount of material submitted.*

Procedure

- Investigating Officer will present management/employer's case. *State whether there are any witnesses to call and if so, who.*
- Chair/Panel will have opportunity to ask questions.
- Employee / Representative will have opportunity to ask questions. *These questions should be limited to the investigation and the evidence presented.*
- Employee / Representative will present employee case. *State whether there are any witnesses to call and if so, who.*
- Chair/Panel will have opportunity to ask questions.
- Investigating Officer will have opportunity to ask questions. *These questions should be limited to the investigation and the evidence presented.*
- Chair will offer brief adjournment before concluding statements.

Concluding statements

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- Investigating Officer will present concluding statement. This is a summary of their case and they may not introduce any new evidence at this point.
- Employee / Representative will present concluding statement. This is a summary of their case and they may not introduce any new evidence at this point.
- Chair will ask all parties, except their HR Adviser, to leave for panel consideration.
- Chair/Panel consider outcome.

Outcome

- Chair invites all parties to return to be informed of outcome.
- The Chair will confirm the outcome will be confirmed in writing, and that the employee has a right of appeal against a formal sanction.

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