

## Disciplinary Procedure

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## Introduction

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1. The City of London Corporation expects the conduct and integrity of employees to be of the highest standard. The Director of Human Resources will be responsible for the interpretation, advice and management of this procedure on behalf of the City Corporation.
2. The objectives of this procedure are to:
  - Help employees whose conduct give cause for dissatisfaction, to improve to the required standard.
  - Clarify how matters requiring formal action (including gross misconduct) will be dealt with by an appropriate level of management as defined in the Managing People Policy.
  - Ensure that employees are treated fairly and consistently.
3. In the interests of natural justice, fairness and prompt resolution to work place issues, all employees are required to cooperate with the disciplinary process including investigations and attending meetings etc in a timely fashion. All employees must appear in person when requested to do so and answer questions asked of them by the Investigating/Hearing Officer. All employees including those under investigation or interviewed as witnesses must maintain confidentiality about matters being considered under the Disciplinary Procedure. Issues of capability will normally be dealt with through the Capability Procedure.

## Scope

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4. This procedure applies to all employees of the City Corporation who have completed their probationary period, except for Chief Officers, Teachers and Police Officers for whom separate procedures apply. This procedure does not apply to agency workers, consultants or other workers providing services to the City Corporation.

## Informal approach

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5. In the normal course of day-to-day work and supervision, employees will be made aware of minor shortcomings in conduct and encouraged to improve. For more serious matters or where the necessary improvement is not achieved and sustained the concern can be confirmed in writing outlining the standard required and/or improvement sought and if there is not a sustained improvement or there is a repetition then the matter will progress to the formal Disciplinary Procedure.
6. When an issue of concern or incident comes to light, before using the formal Disciplinary Procedure, a swift initial fact-finding investigation will take place to determine whether the matter in question warrants a formal investigation. Upon

completion it may be considered appropriate to deal with the matter informally as outlined above as an alternative to formal action.

7. Any informal approach can be taken into account when deciding whether to commence the formal Disciplinary Procedure but will not normally be taken into account when deciding on any subsequent formal disciplinary penalty.

## **Formal procedure**

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### **Formal investigation**

8. Before any formal disciplinary action is taken, a formal investigation will take place. An officer will be appointed as the Investigating Officer by the Commissioning Manager. The Investigating Officer will usually be a manager from the service area or in some circumstances an officer from another service area or an independent appropriately qualified person. The Investigating Officer may be supported by a Human Resources representative. In the case of possible fraud theft corruption or bribery the Head of Internal Audit will also be informed.
9. Depending on the nature of the case an investigation is likely to involve interviewing the employee, potential witnesses and gathering documentary evidence. The employee and each witness will be provided with a record of their interview. The record will usually be a note of key points and not a verbatim record of the meeting. In some exceptional circumstances, it may be considered appropriate to record disciplinary interviews or hearings and in such circumstances the employee will be advised of the reason for doing so and will be provided with a copy of the recording and the transcript where one is produced. Employee and/or their representatives may take their own notes of meetings but cannot record any meetings or hearings using electronic devices e.g. mobile phones.
10. Where a grievance is raised during the course of a disciplinary procedure, in some circumstances it may be appropriate to suspend the formal disciplinary action in order to deal with the grievance. In other circumstances where they are related it may be appropriate to deal with the matters concurrently as one investigation but with clear outcomes under each procedure. The Director of Human Resources will determine the appropriate way forward if this arises.

### **Right to representation during the formal stages**

11. The employee under investigation has the right to be accompanied by a trade union representative or a co-worker of their choice during all stages of the formal process. In exceptional circumstances the Investigating Officer/Hearing Officer in consultation with Human Resources may be prepared to consider an external representative who

is not legally qualified. The employee will need to submit any such request giving full reasons why an exception should be made to the Investigating Officer/Hearing Officer whose decision, in consultation with Human Resources will be final.

12. If the employee is an accredited trade union representative (shop steward), with the employee's permission, the Investigating Officer will discuss the matter with a paid official of the union at an early stage and before any formal proceedings commence.

### **Postponements and non-attendance at formal disciplinary investigations and meetings**

13. A meeting may be re-arranged if the employee fails to attend through circumstances outside their control, such as illness. Thereafter and depending on the circumstances where an employee continues to be unavailable to attend a meeting or fails to make contact, the employee may be advised that the investigation will be concluded based on the evidence available. Alternatives such as telephone interviews and Skype may be considered where agreed between parties. In appropriate cases the Occupational Health Adviser may be consulted about an employee's fitness to attend a meeting or hearing.

### **Precautionary Suspension**

14. At any stage before the investigation has begun, or whilst it is being carried out, the employee may be suspended from attending work by a senior manager if it is considered necessary or expedient to enable investigations to be made, or if it is considered inappropriate for the employee to continue at work during the investigation. The suspension is a precautionary act and not a disciplinary sanction in itself and will be kept under review. In the absence of an officer who is senior enough to authorise a suspension an employee can be sent home by a more junior manager pending a formal suspension from duty.
15. Generally an employee is suspended only in more serious cases and will continue to receive normal pay only. Excluded from normal pay are; non- contractual overtime payments, reimbursement of expenses, and abnormal or occasional payments.
16. In exceptional circumstances such as serious allegations of fraud or theft or in circumstances where the employee has breached the terms of their suspension or has otherwise hampered the investigation, suspension may be on nil or reduced pay as determined by the Director of Human Resources.

## **Outcome of the investigation**

17. At the end of the formal investigation the Investigating Officer will prepare a management report with their findings and make recommendations to the Commissioning Manager including:

- whether there is a case to be answered;
- clarifying what any specific allegations are;
- whether the matter can be dealt with informally or if formal action is warranted;
- an indication of the possible range of penalties if the allegations are upheld at a formal Disciplinary Hearing in order to determine the level of management required to deal with the case.

18. The employee will be advised of the outcome of the investigation. The investigation may indicate:

- there is no case to be answered or
- there are no grounds for formal disciplinary action and, if they have been suspended, the employee will return to work or
- there is a case to be answered but the Commissioning Manager may consider that the matter can be dealt with informally as outlined in paragraph 4 above or
- there are grounds for taking formal action

## **Accepting a disciplinary penalty without a hearing**

19. Where the decision is that there are grounds for taking formal action or at the point when the employee has received the full management report, if the employee accepts the allegations made against them, they may request that the Commissioning Manager reviews the case on paper and indicates the likely penalty and any standard setting. The employee may agree to accept the penalty, which will be confirmed in writing without the need for a formal hearing or recourse to an appeal against the decision. In all other circumstances a hearing will be arranged. Where the outcome may result in dismissal, this will always necessitate a formal hearing to consider the case in full.

## **The Disciplinary Hearing**

20. The Commissioning Manager will appoint a Hearing Officer or may hear the case in person advised by a Human Resources representative. In some circumstances it may be necessary to have a specialist professional technical adviser present to provide advice to the Hearing Officer on complex technical matters but only in an advisory

capacity. The Investigating Officer will present the disciplinary case on behalf of management.

## **Notification of the hearing**

21. The employee will be given written notice of the Disciplinary Hearing, the date, time and venue, giving not less than 7 working days' notice to prepare. However the employee may agree to a shorter period of notice. The notification will include:

- The alleged misconduct and the possible outcome;
- A copy of the management report and any supporting documents including statements which have been taken during the course of the investigation; the names of witnesses attending the hearing and the right to be accompanied.
- The name and job title of the Hearing Officer

The employee may offer a reasonable alternative time within five days of the original date of the Disciplinary Hearing if their chosen companion is unable to attend.

22. Employees must submit any documentation or names of witnesses they wish to call and the name of their companion at least 3 working days before the date of the Disciplinary Hearing. It is the employee's responsibility to arrange for any witnesses to attend who have not been interviewed by the Investigating Officer or to request the attendance of any additional witnesses who have been interviewed by the Investigating Officer.

23. The arrangements to be adopted at a formal Disciplinary Hearing are outlined in Appendix 1.

## **Determining the outcome**

24. The purpose of the Disciplinary Hearing is to ensure that the Hearing Officer as the decision maker is satisfied that they have allowed the employee to respond to the allegations; considered the evidence and case put by both sides; and if necessary called for additional information. The Hearing Officer will weigh up all of the evidence and decide on the balance of probability whether the allegations are upheld in full, partially or not at all.

25. The penalty imposed will depend on the seriousness of the case, known mitigating factors, and relevant employment history (the employee's disciplinary record including current warnings, general work record, work experience, position and length of service). In the case of a serious offence, an employee may be given a final written warning even if it is a first offence. Similarly an employee may be dismissed for gross misconduct even if it is a first offence.

26. Disciplinary decisions will not be based on an expired warning but where a pattern emerges, the fact that there is an expired warning may explain why a lesser sanction was not given. In the case of gross misconduct, an employee will usually be dismissed without notice. A non-exhaustive list of examples of conduct which are regarded as gross misconduct is provided at paragraph 29 of this procedure. Should the offence involve financial irregularities then the City Corporation will aim to recover assets and take appropriate action including notifying the police.
27. The outcome of the Disciplinary Hearing will either be notified at the end of the hearing or if adjourned, will follow in writing as soon as practicable usually within 5 working days of the Disciplinary Hearing. Where there is no case to be answered this will also be confirmed in writing.

### **Penalties and other sanctions**

28. If the case is proven on the balance of probabilities, then one or more of the following penalties may be imposed:
- A written warning
  - A final written warning
  - Dismissal with notice
  - Dismissal without notice
29. Further penalties which could be imposed in conjunction with, or as an alternative to any form of warning include:
- Withholding an increment
  - Suspension for up to 10 working days without pay
  - Demotion or redeployment where an alternative position is available
  - Specified training or re-training

### **Examples of Gross Misconduct**

30. The following non-exclusive list provides examples of offences which are generally regarded as gross misconduct:
- theft, fraud, deliberate falsification of records, corruption or bribery
  - fighting, serious abuse towards or assault on another person
  - deliberate damage to property
  - serious incapability through alcohol or being under the influence of drugs
  - serious negligence or dereliction of duty which risks or causes unacceptable loss, damage or injury
  - a serious act of insubordination
  - unlawful discrimination or harassment of a fellow co-worker or customer

- misuse of information technology, computers and other electronic devices provided for or used for work purposes
- serious contravention of statutory regulations, including those relating to health and safety, that would render the City Corporation or its employees liable to legal action or bring the City Corporation into disrepute
- a breach or omission relating to safeguarding of a pupil, client or young or vulnerable person
- serious breach of confidentiality
- offences or actions within or outside the City Corporation employment which by their nature either:
  - a. prevent the employee from continuing to do the job for which they were employed; or
  - b. seriously call into question the employee's fitness to continue in the job which s/he was employed to do; or
  - c. have or could have a damaging effect on the reputation and integrity of the City Corporation or its partners; or
  - d. considered to be a wilful breach of the trust and confidence that is implicit between the employer, employee and work colleagues.

### **Time limits for warnings**

31. All formal written warnings will usually be effective for a specified period, which will be communicated at the time the decision is taken. Generally, final warnings will be effective for 12 months and other warnings for 6 months from the date of the disciplinary decision. They could be longer in certain circumstances. If there is no further misconduct in this period, warnings will usually be disregarded for disciplinary purposes.
32. There may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force, only to lapse very soon thereafter. Where a pattern emerges and/or there is evidence of abuse of the disciplinary process, the employee's disciplinary record should be borne in mind in deciding how long any warning should last.
33. Exceptionally, there may be circumstances where the misconduct is so serious that it cannot realistically be disregarded for future disciplinary purposes. In such circumstances it will be noted in the disciplinary decision.



## Right to appeal

34. Appeals must be made in writing within 5 working days of receipt of the original decision. Appeals must specify the grounds of appeal and may relate to the severity of the sanction, application of the procedure, new evidence which was not previously available or any other reason which must be specified. Appeals against disciplinary warnings must be made to the relevant Director. Appeals against dismissal must be made to the Director of Human Resources. A manager will be appointed as the Appeal Officer to hear the Appeal.
35. In the case of appeals against dismissal for employees at Grade I and J the appeal will be heard by the Staff Appeal Committee. For employees up to grade H they may opt to have an independent Level One officer or a hearing before the Appeal Committee in accordance with the Managing People Policy. All Appeal Hearings will be supported by a Human Resources representative.
36. The employee may request that their appeal is a review of the paperwork only, without the attendance of either party at a hearing. In these circumstances if the Director is agreeable to such an approach, the Disciplinary Hearing Officer will be asked to submit the appeal pack as outlined in paragraph 37. The Appeal Officer supported by a Human Resources representative may seek the advice of a technical specialist however this is in an advisory capacity only. The appeal decision will be final and confirmed in writing. In all other cases an Appeal Hearing as outlined in Appendix B will be arranged.
37. On receipt of an appeal the Disciplinary Hearing Officer will be required to make a written response to the appeal within 10 working days of receipt of the appeal and this will be shared with the employee. The Disciplinary Hearing Officer will be responsible for producing an appeal pack which will include the original disciplinary documentation; record of the Disciplinary Hearing; the decision letter; the appeal submission and the Disciplinary Hearing Officer's response to the appeal.
38. Appeals will normally be heard within 15 working days of the appeal being received. Appeal Hearings will normally be a review of the disciplinary decision and consideration of the specific grounds of appeal. It is not usual to have new evidence or witnesses present from either side, apart from the Investigating Officer. Any request for new evidence or witness attendance must be made at the time of making the appeal to the Director/ Director of Human Resources for consideration explaining why the new evidence or witness evidence was not provided at the time the original decision was made and how the evidence is material. The Director's/ Director of Human Resource's decision will be final and the employee will need to provide any agreed additional documentation no more than 5 working days after this decision.

## List of appendices

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Appendix 1 – Disciplinary Hearing Format

Appendix 2 – Appeal Hearing Format

## Links / Other resources

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- [Managing People Policy](#)
- [Employee Assistance Programme](#)
- ACAS Code of Practice 1 - Disciplinary and Grievance Procedures