Disciplinary procedures

1. This procedure is based on the ACAS Code of Practice Disciplinary and Grievance Procedures and The ACAS Guide to Discipline and Grievances at Work.

2. When Disciplinary situations occur the ACAS documentation will be used in conjunction with HEFCW's policies and procedures.

3. It is important that all individuals involved in the process understand that preserving confidentiality is essential and some cases may involve protected characteristics as defined by the Equality Act and referenced in the Dignity at Work policy.

4. Before any member of staff is involved in a disciplinary case they must read the ACAS Guide to Discipline and Grievances at Work.

Resolving discipline issues informally

5. Cases of minor misconduct or unsatisfactory performance are usually best dealt with informally as it can resolve issues quickly and confidentially. This is undertaken by the line manager in the form of a conversation. The line manager should:

   - Keep informal notes of discussions;
   - Discuss potential additional training, coaching and advice;
   - Set timescales for reviews which have been agreed between the employee and the line manager;
   - Refer to the Probation policy and/or Performance and Development Review process if applicable.
   - Inform the employee that should there be no or insufficient improvement it may result in formal disciplinary proceedings.

6. If informal action does not bring about an improvement, or the misconduct /unsatisfactory performance is considered too serious to be classed as minor a meeting will be held to decide whether formal disciplinary procedures should be followed. The decision will be made by the Chief Executive, in consultation with the line manager and HR.

7. It is important to limit the number of staff involved in this process to ensure confidentiality and minimise conflicts should formal stages be required.

Formal disciplinary action

8. When potential formal disciplinary action is required, any employee involved must read and comply with the ACAS Code of Practice Disciplinary and Grievance Procedures.

9. The sections in the ACAS Guide to Discipline and Grievances at Work will explain in detail the statutory requirements of the Code of Practice and the processes that must be adhered to. These ACAS guidance document will also explain the rights that an employee has when they are potentially being disciplined.

10. The sections that must be read and followed are:
Disciplinary procedures

- Establishing the facts
- Informing the employee
- Holding a disciplinary meeting
- Allowing the employee to be accompanied
- Taking action after the disciplinary meeting
- Provide employees with an opportunity to appeal
- Dealing with special cases

11. A Designated Officer will be appointed by the Chief Executive.

12. The Designated Officer will ensure that processes are followed. They are the Chair of the disciplinary meeting and will be responsible for making a decision on the disciplinary based on the information gathered.

13. An Investigation Officer(s) will be appointed to undertake any investigation, interviews and gather the information required for the Designated Officer.

14. HR will provide advice to individual employees, immediate line managers, Designated Officers and Investigation Officers on the proper operation of the Disciplinary procedure.

Appointment of a Designated Officer

15. Formal disciplinary procedures can only be taken by an appropriate Designated Officer. One of the following employees will carry out the role of the Designated Officer in the Disciplinary procedure:
   - Chief Executive
   - Head of Team/Director;
   - Senior employees with delegated authority from the Chief Executive/Director

16. Where conflicts arise it may be appropriate for the following to be Designated Officer:
   - Chair of HEFCW
   - HR Committee Council Member

17. The Designated Officer’s first role is to decide if there are reasonable grounds for believing that an employee was responsible for the act of misconduct. No formal disciplinary procedures will begin until this decision has been made.

18. The Designated Officer will appoint an Investigation Officer to conduct an investigation on their behalf.

19. The Designated Officer may suspend the employee on full basic pay pending the outcome of an investigation and / or the disciplinary process and being dependent upon the nature and seriousness of the alleged misconduct. The Designated Officer may decide to suspend the employee at any given point during the investigation process.
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Appointment of an Investigation Officer

20. The Investigation Officer will undertake a full and thorough investigation of a disciplinary matter and identify whether there is a case to answer or not. They will be a person unconnected with any of the events. There can be more than one Investigation Officer appointed to a case.

21. The Investigation Officer will complete a report to the Designated Officer which should include:
   - the evidence gathered during the investigation;
   - the recommendation of whether there is a case to answer or not; and
   - any amendments required to policies or procedures referred to during the investigation.

22. In most circumstances, HR will act as note taker for all investigation and hearing meetings unless there is a conflict. If a note taker needs to be selected, the Designated Officer should agree this with the Investigation Officer and ensure there is no conflict and that the note taker understands the importance of confidentiality.

23. At the end of each meeting, the note taker must read back their notes and all parties must agree, sign and date the notes before concluding the meeting.

HR’s role

24. HR will write to the employee on behalf of the Designated Officer outlining the nature of the disciplinary issue and informing them who has been appointed as Investigation Officers. They will also be informed of the following rights:
   - to be accompanied by a work colleague or trade union representative of their choice, at all formal meetings;
   - to be provided with copies of evidence and relevant witness statements in advance of a disciplinary meeting;
   - to be able to put forward witnesses or witness statement or any supplementary evidence prior to the disciplinary meeting.

Investigation and hearing

25. The Investigation Officer will present a summary of their findings to the Designated Officer and HR representative which will outline whether there are reasonable grounds for a breach of discipline. If there are no reasonable grounds, this will be communicated by the Designated Officer to the individual raising the concern.

26. Where there are grounds for disciplinary, the Designated Officer will then arrange for a disciplinary hearing to take place. The meeting should be held without unreasonable delay whilst allowing the employee reasonable time to prepare their case and providing them with all relevant evidence collected by the Investigation Officer.
Disciplinary procedures

27. A HR representative will also attend the disciplinary hearing to ensure due process is being followed.

28. The employee will be given the opportunity to state his or her case during the disciplinary meeting and before a disciplinary sanction is imposed.

29. Without unreasonable delay following the hearing, the Designated Officer will verbally inform the employee of the decision reached. This will be confirmed in writing by HR.

Disciplinary Sanction

30. In deciding the appropriate disciplinary sanction, regard will be given to the employee’s previous employment record, the nature of the offence and the circumstances of each particular case. However, reference will not be made to previous spent disciplinary sanctions.

First formal action for unsatisfactory performance

31. An improvement note will be issued for unsatisfactory attendance/ conduct/ performance. This will set out the issue, the improvement that is required, the timescale, any help that may be given and the right of appeal. This will constitute the first stage of the formal procedure. A record of the improvement note will be kept on the HR personnel file for six months (See Duration of Warnings), subject to achieving and sustaining the improvement.

First formal action for misconduct

32. A first written warning will be issued for misconduct. This warning will set out the issue, the change required and the right of appeal. This will inform the employee that a final written warning may be considered if there is further misconduct. A record of the warning will be kept on the HR personnel file for six months, subject to achieving and sustaining the improvement.

33. At the end of the six months the record will be removed if improvement has been achieved. Any future disciplinary actions will be treated as though there were no previous warnings on file.

Final written warning

34. If the employee has a current warning or improvement note about conduct or performance then further misconduct or unsatisfactory performance may warrant a final written warning. This may also be the case where ‘first offence’ misconduct is sufficiently serious, but would not justify dismissal. The written warning will give details of the issue, the improvement required and the timescale. It will also warn that failure to improve may lead to dismissal (or some other sanction short of dismissal) and the employee will be given the right of appeal. This warning will normally remain current for 12 months. A copy of this warning will be kept on the HR personnel file.
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35. At the end of the 12 months the record will be removed if improvement has been achieved. Any future disciplinary actions will be treated as though there were no previous warnings on file.

Dismissal or other sanction

36. If there is still further misconduct or failure to improve performance the final step in the procedure may be dismissal or some other sanction short of dismissal. Dismissal decisions can normally only be taken by the Chief Executive, and the employee will be provided with reasons for the dismissal in writing, detailing the date on which the employment will terminate, the notice period, or payment in lieu of notice and the right of appeal.

37. If some sanction short of dismissal is imposed, the employee will receive details of the sanction, will be warned that dismissal could result if there is no satisfactory improvement, and will be advised of the right of appeal. These sanctions may only be applied if allowed for in the employee’s contract. This warning will normally remain current for 12 months subject to achieving and sustaining the improvement. A copy of this warning will be kept on the HR personnel file.

38. Examples of some other sanction short of dismissal are:
   - Transfer of team
   - Suspension without pay
   - Demotion / loss of seniority

Gross misconduct

39. The following list provides some examples of offences which are normally regarded as gross misconduct. This list is not exhaustive:

   - theft or fraud;
   - physical violence or bullying;
   - deliberate and serious damage to property/documents/individuals;
   - serious misuse of HEFCW’s property or name;
   - serious failure to apply HEFCW’s policies and procedures;
   - serious failure to comply with HEFCW’s Information Security policies and procedures which includes deliberately accessing internet sites containing pornographic, offensive or obscene material;
   - serious insubordination;
   - unlawful discrimination or harassment;
   - bringing the organisation into serious disrepute;
   - incapability at work brought on by alcohol or illegal drugs;
   - causing loss, damage or injury through serious negligence;
   - a serious breach of health and safety rules;
   - a serious breach of trust/confidence.
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40. If an employee is accused of an act of gross misconduct, they may be suspended from work on full pay while the alleged offence is investigated. If, on completion of the investigation and the full disciplinary procedure, the Designated Officer, in conjunction with the Chief Executive is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

Criminal proceedings

41. Where there is an alleged criminal act at work, the matter will be referred to the police who will decide whether prosecution is justified. If time allows, reporting the matter to the police should by undertaken by the Chief Executive. Where there is insufficient evidence for a criminal prosecution to proceed, disciplinary action may be taken.

42. Disciplinary action can take place alongside criminal investigations or legal proceedings. HEFCW will usually consult its legal advisers before taking disciplinary action in parallel with criminal proceedings. In cases of fraud Welsh Government will also be consulted.

43. Where criminal charges or convictions occur outside of work, consideration will be given as to whether the offence makes the employee unsuitable for their particular type of work and whether the conduct is sufficiently serious to invoke the disciplinary procedure because of its employment implications.

Appeals

44. An employee who wishes to appeal against a disciplinary sanction must do so in writing within five working days of receiving the letter. The individual hearing the appeal must be senior in authority to the individual who took the original disciplinary decision (normally the Chair of the HR Committee) and, where possible, should not have been involved in the original decision process.

45. The individual hearing the appeal only has the right to confirm or reduce the sanction.

46. If an appeal is made after five working days, they must be able to demonstrate good reason as to why the timescale could not be adhered to. The appeal must be clear and state whether the employee is appealing against:
   i. the findings of the investigation; or
   ii. the level of disciplinary sanction applied.

47. The following documents must be available to all parties for the appeal:
   i. copies of relevant documents presented at the disciplinary hearing;
   ii. copies of the record of the disciplinary hearing; and
   iii. any statement of agreed fact confirmed in writing between the parties prior to the hearing.
Disciplinary procedures

48. The appeal process must allow for an employee to have an opportunity to comment on any new evidence before any decision is taken.

49. The employee will be advised by letter of the date, location and other arrangements for the hearing. Appeal hearings should be heard within five working days of the receipt of the notice of appeal.

50. Without unreasonable delay following the appeal, the employee will be verbally informed of the decision reached. This will be confirmed in writing by HR.

51. Appeal decisions will be final and will be the concluding stage of this procedure.

Disciplinary records

52. At all stages, line managers, Investigation Officers and Designated Officers must keep full written records of all meetings and investigations held. Documentary evidence for the formal process will be collected where appropriate. Notes will be written at the time or as soon as possible after a discussion or hearing to ensure accuracy. Records will be signed and dated by all those attending the hearing.

53. Employees may also wish to keep records of events to support their case.

54. All records relating to any formal disciplinary procedures will be kept on the employee's personal file. No duplicate records will be kept by individuals undertaking a role within the process. Records will be confidential and retained in accordance with the disciplinary policy and the Data Protection Act.

55. Should an alleged act of indiscipline be found to be unsubstantiated at any stage within this process or a particular disciplinary sanction be considered unwarranted following an appeal, any written reference to it on the employee's personal file shall be destroyed.

56. If a job reference is requested, and a current disciplinary warning is on file, this can be disclosed to the prospective employer.

Duration of warnings

57. A record of an improvement note will be kept by the line manager for six months and, a first written warning will normally be kept on file for six months. The final written warning will normally be kept on file for 12 months and in exceptional circumstances for more than 12 months. The warning will be disregarded for disciplinary purposes after this period subject to the issues being resolved.

Justification of duration of warnings

58. Similar offences will not always call for the same disciplinary sanction or the duration of the warnings. Each case must be based on its individual circumstances, taking into account such issues as health or domestic problems, provocation, justifiable ignorance.
Disciplinary procedures

of the rule or standard involved, inconsistent treatment in the past, sufficient time to evidence satisfactory conduct, duration of unsatisfactory conduct.

Monitoring performance

59. Where appropriate, disciplinary action will be followed up with the aim of encouraging improvement. The line manager must monitor and discuss progress regularly.

Right to be accompanied

60. The employee has the right to be accompanied at all formal meetings by a work colleague or a trade union representative. An employee would not normally be accompanied to an investigation meeting. The accompanying individual will be allowed time off with pay to fulfil their role.

Decision making

61. Informal disciplinary action may be taken by an employee’s line manager. Formal disciplinary action may only be taken by the Designated Officer as approved by the Chief Executive. The decision to dismiss can normally only be taken by the Chief Executive.

Notice

62. Unless dismissal is because of gross misconduct the employee will receive the appropriate period of notice as defined in their Contract of Employment.