

# Disciplinary Policy

## 1 Purpose

- 1.1 Healthwatch Worcestershire's Disciplinary Policy outlines the organisation's approach to dealing with employees whose conduct or job performance falls below an acceptable level. The policy follows ACAS guidance and the ACAS Code of Practice.
- 1.2 The policy applies to all Healthwatch Worcestershire employees.
- 1.3 This policy is not contractual and does not form part of an employee's contract of employment. Healthwatch Worcestershire reserves the right to make amendments to this policy from time to time at its sole discretion.

## 2 Principles

- 2.1 Healthwatch Worcestershire is committed to fair and consistent treatment of employees when disciplinary action becomes necessary. The organisation will make clear its expectations and will support and encourage all employees to reach the standards of conduct and performance required.
- 2.2 Healthwatch Worcestershire will endeavour to manage all disciplinary matters in a timely manner and issues of misconduct or unsatisfactory performance will be addressed by management at the earliest opportunity. Where it is reasonable to do so, minor issues will be dealt with through informal management intervention outside the Disciplinary Procedure.
- 2.3 Where formal disciplinary issues are identified, the employee will be advised of the nature of the alleged misconduct or unsatisfactory performance and will be given fair opportunity to respond before any decision is made.
- 2.4 Where misconduct is identified, investigation will be fair, reasonable and proportionate to the seriousness of the alleged offence.
- 2.5 No action will be taken against any employee until all available facts and supporting information have been properly considered.
- 2.6 No employee will be dismissed for the first instance of misconduct or unsatisfactory performance, except in the case of Gross Misconduct or Gross Negligence.
- 2.7 Definitions and examples of Misconduct and Gross Misconduct are given in Appendixes A and B.

### **3 Fairness**

- 3.1 Where the formal disciplinary procedure is invoked, the employee will be given sufficient notice of any Disciplinary Hearing to enable them to prepare their case.
- 3.2 During any formal Disciplinary Hearing (or subsequent Appeal Hearing), the employee will be entitled to seek advice from and be accompanied by a trade union representative or work colleague (employee of Healthwatch Worcestershire). The colleague will be allowed to attend in duty time and will be allowed reasonable time to familiarise him/herself with the details of the case.
- 3.3 Management reserve the right to request that the employee choose a different colleague where the attendance of the original person may cause a conflict of interest or lead to unreasonable delay or expense.
- 3.4 This policy does not allow for either party to be legally represented at either the Disciplinary Hearing or any subsequent Appeal. In some circumstances, eg an employee with a disability, a reasonable request for an external companion such as a support worker will be given fair consideration.
- 3.5 Where a disciplinary sanction is imposed, the employee will receive written confirmation and will be formally advised of their right of appeal.

### **4 Confidentiality**

- 4.1 Written records of any formal disciplinary procedures including any minutes or contemporaneous notes will be kept and maintained in accordance with the Data Protection Act 2018.
- 4.2 However, in certain circumstances, third parties who are affected by another employee's misconduct may be informed of the outcome.

### **5. Audit and Review**

- 5.1 A review of this policy will take place annually unless legal, contractual, specific business requirements, operational changes or events necessitate an earlier review.
- 5.2 This policy will be subject to Equality Impact Assessment under the Public Sector Equality Duty Act 2010.

## **Disciplinary Procedure**

### **1 Informal Management Advice**

- 1.1 Where it is reasonable to do so, minor issues will be dealt with through informal management intervention outside the Disciplinary Procedure. This may involve advice, coaching or counselling and will be subject to management review to ensure that the required improvement is made. Managers should retain their own notes of informal management intervention for a reasonable period until they are satisfied that the employee fully understands and accepts the expectations and improvement has been achieved and sustained.

### **2 When should the Disciplinary Procedure be invoked?**

- 2.1 The Disciplinary Procedure should be invoked when:
- the required improvement is not achieved, or following a period of improvement, the employee lapses again;
  - a more serious issue comes to light.
- 2.2 Where the manager is contemplating invoking the formal Disciplinary Procedure, the employee should be advised promptly to ensure that they can participate fully in any investigation and can advise of any counter-evidence or witnesses who may be able to support their case.
- 2.3 Before disciplinary action is taken, the manager will be responsible for ensuring that all facts are available. He/she must keep an open mind ensuring that all relevant evidence is secured, facts are established promptly and, where appropriate, any witnesses are spoken to or interviewed.
- 2.4 The manager will then decide whether there is a case to answer and will advise the employee accordingly. Where the manager is satisfied that there is no case to answer, or where the matter is less serious than initially thought and can be dealt with through informal management advice, this should be concluded as quickly as possible (as in 1.1 above).

### **3 Formal Disciplinary Procedure**

- 3.1 Healthwatch Worcestershire reserves the right to commence the Disciplinary Procedure at any stage dependent upon the seriousness of the misconduct or unsatisfactory performance.
- 3.2 Disciplinary Hearings will be chaired by an appropriate senior manager; Healthwatch Worcestershire have nominated the Managing Director and he/she will usually chair such Hearings unless there is a good reason to nominate an alternative manager.

- 3.3 The employee will be entitled to seek advice from and be accompanied at any Disciplinary Hearing by a trade union representative or work colleague (employee of Healthwatch Worcestershire).

## **4 Stages of Discipline**

### **4.1 Stage 1 - First Written Warning**

Where an informal management intervention has not produced the required change or where the matter is considered too serious to be managed outside the Disciplinary Procedure, a First Written Warning will usually be considered. A First Written Warning will be appropriate for minor offences and will remain 'live' for 12 months.

The employee will receive a letter within 5 days of the Disciplinary Hearing stating the improvement required (with any specific objectives), detail any support or re-training which will be provided and the time scale for improvement. The letter will also warn that further disciplinary action will be considered at Stage 2 if there is no satisfactory improvement or any repetition of misconduct within the 12 months duration of the warning. The employee will be advised of their right of appeal.

### **4.2 Stage 2 - Final Written Warning**

In the case of a more serious first offence or if the required improvement has not been made following a First Written Warning, a Final Written Warning may be considered. A Final Written Warning will remain 'live' for 12 months.

The employee will receive a letter within 5 days of the Disciplinary Hearing stating the improvement required (with any specific objectives), detail any support or re-training which will be provided and the time scale for improvement. The letter will also warn that if the employee's conduct or performance does not improve or any further acts of misconduct occur within the 12 months duration of the warning, disciplinary action will be considered at Stage 3 which may result in their dismissal. The employee will be advised of their right of appeal.

### **4.3 Stage 3 - Dismissal or action short of dismissal**

Where an individual is subject to a 'live' Final Written Warning and their conduct or performance still does not improve, the following sanctions will be considered:

- Dismissal with contractual notice;
- Demotion or transfer to a more suitable job, if available (NB where the alternative job is at a lower salary, no compensation will be paid)

No employee will be dismissed for the first instance of misconduct or unsatisfactory performance, except in the case of Gross Misconduct or

Gross Negligence. For a dismissal to be fair, the manager must be satisfied that there is sufficient reason to justify dismissal, reasonable alternatives to dismissal were properly considered, the dismissal is consistent with past precedent and the Disciplinary Procedure has been properly followed.

Where an employee is dismissed, full reasons for dismissal will be confirmed in writing within 14 days of the Disciplinary Hearing. The employee must be advised of the date on which their employment will terminate and what payments will be made to them upon termination, eg accrued holiday pay. The employee will be advised of their right of appeal.

Examples of Misconduct are listed in Appendix A.

## **5 Gross Misconduct**

- 5.1 Gross Misconduct is a single act of misconduct that is serious enough on its own to completely undermine the employer's trust and confidence and to justify the employee's summary dismissal, ie dismissal without contractual notice. In such a case, the burden of proof, based on a 'balance of probability' will be higher and the manager will need to reach 'a genuine and reasonable belief' that the allegations are more likely to be true than not true.
- 5.2 Where the manager believes that an employee may have committed an act of Gross Misconduct, suspension may be considered, on full pay, pending full investigation. Such suspension will only be imposed after careful consideration, will be for the shortest period possible and will be reviewed weekly to ensure that it is not unnecessarily protracted. In these circumstances, suspension is a neutral act and is not considered as a disciplinary action.
- 5.3 In reaching a decision to dismiss, the manager must be satisfied that there is sufficient reason to justify dismissal, reasonable alternatives to dismissal were properly considered, the dismissal is consistent with past precedent and the Disciplinary Procedure has been properly followed.

Where an employee is dismissed, full reasons for dismissal will be confirmed in writing within 14 days of the Disciplinary Hearing. The employee will be advised of their right of appeal.

- 5.4 Examples of Gross Misconduct are listed in Appendix B.

## **6 Appeal Hearing**

- 6.1 Appeals are an essential part of natural justice and all employees have the right of appeal against disciplinary action. Any appeal should be in writing and received within 5 days of the date of the letter confirming the disciplinary decision, stating the reason for the appeal.
- 6.2 Healthwatch Worcestershire has nominated the Chairman to manage appeals and he/she will usually chair such Hearings unless there is a good reason to

nominate an alternative Director. The Chairman may delegate responsibility at his/her discretion to an alternative and impartial Director of the Healthwatch Worcestershire Board.

- 6.3 An Appeal Hearing will normally be held within 10 working days of receiving the notice of appeal.
- 6.4 The purpose of the appeal is to review the decision made and the sanction imposed and is not intended to repeat the detailed evidence from the Disciplinary Hearing. The appeal should focus on specific factors which the employee feels have received insufficient consideration and/or where the sanction is considered to be unduly harsh.
- 6.5 The employee is entitled to be accompanied by a trade union representative or work colleague (employee of Healthwatch Worcestershire) at the Appeal Hearing.
- 6.6 The Chairman may give his/her decision at the end of the Hearing, or on occasion may wish to further reflect and in such instance will give his/her decision in writing as soon as is practicable but in any event no later than 7 days after the Appeal Hearing. In delivering his/her decision, the Chairman should explain how his/her decision was reached.
- 6.7 The decisions available to the Chairman on appeal are:
  - To uphold the appeal, ie to nullify the original decision;
  - To reduce the sanction;
  - To confirm the decision made at the Disciplinary Hearing.

Where a different decision is made at the Appeal Hearing, it should not be seen to undermine the manager's authority, but makes clear the independent nature of the appeal.

- 6.8 Where an appeal against dismissal is upheld, the employee will be reinstated with no break in service and paid as if they had been at work throughout.
- 6.9 Where the appeal against dismissal fails, the effective date of termination shall be as directed as the Disciplinary Hearing.
- 6.10 The decision of the Chairman is final and will conclude the internal procedure.

## **7 Disciplinary Action during Probationary Period**

- 7.1 Employees who are under Probationary Period will be subject to regular reviews of progress and will be reminded of management expectations in terms of conduct and job performance and given fair opportunity to improve. However, where formal disciplinary action becomes necessary, the minimum sanction will be a Final Written Warning, ie giving the individual a final opportunity to improve before their Probation is terminated.

7.2 In the event of serious misconduct, an employee under their Probationary Period will be treated in the same way as other colleagues with longer service.

**8. Removal of warnings from Personal file**

8.1 When warnings cease to be 'live' they will be removed from the Personal file. However, in line with Healthwatch Worcestershire's Retention and Disposal policy, discipline files will be retained separately and confidentially.

## MISCONDUCT

Misconduct will include breach of Healthwatch Worcestershire's policies, procedures, rules and working practices and conduct which might cause embarrassment or bring Healthwatch Worcestershire into disrepute with members of the public or other contacts.

The following are examples of the type of behavior which may be regarded as misconduct. This list is not exhaustive and, in certain circumstances may include other conduct not listed here. Equally, the type of behavior listed below may, in certain circumstances, constitute Gross Misconduct.

- Frequent and/or persistent absence from work without reasonable cause
- Failure to comply with the procedures for the notification of sickness absence
- Lateness, poor timekeeping or taking of unauthorised and excessive breaks
- Poor performance including inaccurate, negligent and unsatisfactory standard of work or unacceptable attitude
- Unacceptable appearance, dress and personal hygiene
- Unauthorised private activities during working hours
- Unauthorised private use of Healthwatch Worcestershire's property or equipment
- Breach of Policies, Financial Regulations and/or Standing Orders
- Insubordination/ refusal to carry out reasonable instructions
- Abusive or offensive words or behavior to other employees, volunteers, partners, clients or other contacts
- Misuse of social media reflecting adversely on Healthwatch Worcestershire

## GROSS MISCONDUCT

Gross Misconduct is a single act of misconduct that is serious enough on its own to completely undermine the employer's trust and confidence and to justify the employee's summary dismissal, ie dismissal without contractual notice.

The following are examples of the type of conduct which may be regarded as Gross Misconduct. This list is not exhaustive and, in certain circumstances may include other conduct not listed here.

- Theft, fraud and other offences of dishonesty including the deliberate falsification of expense claims, timesheets and other documents
- Physical violence, bullying, threatening or offensive language
- Unlawful discrimination, victimisation or harassment
- Deliberate and serious damage to Healthwatch Worcestershire's property
- Serious breach of Health and Safety rules
- Reporting for work under the influence of alcohol or illegal drugs
- Smoking in buildings or other areas where smoking is prohibited
- Unauthorised disclosure of confidential information (subject to the Public Interest (Disclosures) Act 1998)
- Serious misuse of Healthwatch Worcestershire's equipment, property, funds or name
- Misuse or unauthorised use of computer systems including deliberately accessing internet sites containing pornographic, offensive or obscene material
- Conduct which would lead to a total breakdown of trust and confidence or bring Healthwatch Worcestershire into serious disrepute with members of the public or other contacts
- Serious breaches of Policies, Financial Regulations and/or Standing Orders
- Serious insubordination, including refusal to carry out a reasonable and lawful instruction
- Misuse of social media bringing Healthwatch Worcestershire into disrepute with the public or partners