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**SECTION 1 VERSION CONTROL**

Version No.	Date	Post Holder/Author	Post	Reason for Issue
1.0	Nov 2012	Sue Peckham	Senior HR Business Partner	New guide to support new policy and procedure1
1.1	Jan 2014	Steve Mitchel	Senior HR Partner	Review with Unison/GMB
1.2	April 2014	Steve Mitchel	Senior HR Partner	Amendment to how many working days for an appeal to be changed to 5 days.

**SECTION 2 DETAILS**

**MANAGEMENT GUIDE - Police Staff Misconduct**

**1. INTRODUCTION**

The management guide must be read in conjunction with PS 148 Police Staff Misconduct Policy and PD 612 Police Staff Misconduct Procedures. This management guide is applicable to Police Staff Misconduct policy/procedures only.

The Police Staff Misconduct Procedure provides a transparent framework to deal with conduct which does not meet the standards expected of police staff working for Nottinghamshire Police. The main purpose of the Police Staff Misconduct Procedure is to encourage an employee whose conduct is unsatisfactory to improve.

Conduct and behaviour issues should be handled promptly, and if appropriate informally, unless they are of a nature which requires formal disciplinary action.

It should not automatically be assumed that conduct or behaviour issues require a disciplinary investigation. There may be occasions when an informal approach is appropriate. This is not covered in this guide. The other consideration prior to commencing a disciplinary investigation is whether or not this is the appropriate policy and procedure to follow, for example the Performance Management and Improvement Policy may apply in cases of performance.

## 2. LEGAL OBLIGATIONS

Nottinghamshire Police Staff Misconduct Policy and Procedure comply with the Acas Code of Practice. The Code is issued under section 199 of the Trade Union and Labour Relations (Consolidation) Act 1992 and was laid before both Houses of Parliament on 9 December 2008. It came into effect by order of the Secretary of State on 6 April 2009 and replaces the Code issued in 2004.

There is a legal duty to act in a reasonable way when dealing with disciplinary issues.

Employment Tribunals are legally required to take the **Acas Code of Practice on disciplinary and grievance procedures** into account when considering relevant cases. Tribunals may adjust any compensatory awards by up to 25 per cent for unreasonable failure to comply with any provision of the Code.

## 3. INVESTIGATING OFFICIALS

The line manager should discuss with the HR Advisor (who in turn will consult with the HR Partner) to determine if a disciplinary investigation is appropriate.

Where there is any question of misconduct/gross misconduct involving financial irregularities, the HR Partner will liaise with Professional Standards as appropriate.

The decision to appoint an Investigating Official (IO) and a Deciding Official (DO) to chair a hearing should it progress to that stage will be made by the Head of HR & OD or his/her nominated deputy. The DO will be a senior staff member P grade or above or a police officer equivalent.

The DO will review the Investigating Official's report and determine whether there is a case to answer or not and whether a disciplinary hearing is required.

Care will be taken to ensure that Investigating Officials and Deciding Officials have had no involvement in the alleged incident or have any personal connection to the individual. The employee and/or trade union representative or work colleague may object to the official/s appointed on grounds of suitability. The Head of HR& OD or nominated deputy should consider such objections and consider whether it is reasonable and appropriate in the circumstances to change either of the designated officials.

## 4. DISCIPLINARY ALLEGATIONS

At the initial assessment stage consideration ought to be given to the following:

- Is a disciplinary investigation appropriate?
- Is an alternative policy (e.g. Performance, Capability or Attendance Management) more appropriate?
- If misconduct, what is the level of seriousness and is the matter so serious that it amounts to gross misconduct (i.e. that the conduct is so serious that it justifies dismissal)?
- Are there any live disciplinary outcomes on the employee's service record which might have a bearing on the assessment?

The following provides a guide as to whether the misconduct should be considered misconduct or gross misconduct.

### Misconduct

- Lateness for work.
- Unauthorised absence from the workplace.
- Failure to comply with Nottinghamshire Police policies and procedures.
- Refusal to carry out reasonable instructions.
- Misuse of Nottinghamshire Police property, facilities or services.

### Gross Misconduct

Gross misconduct can occur on or off duty. It means conduct which is so serious that it would justify dismissal. It includes:

- Fighting or assault on another person on or near Police premises.
- Wilful damage to Police property or that of other employees.
- Fraud, deceit, deception or dishonesty including falsification of documents or records.
- A serious breach of Nottinghamshire Police policies/procedures.
- Threatening or intimidating conduct or language.
- Bullying or harassment in the workplace.
- Theft, misappropriation, misuse or unauthorised use of Nottinghamshire Police premises, facilities or property.
- Unauthorised access to computer records or use of computers.
- Accessing and disclosing information obtained from Nottinghamshire Police internal systems for unauthorised purposes or persons.
- Wilful disobedience of proper and reasonable instructions.
- Breaches of fire and health and safety regulations and policies.
- Incapability at work through the use of alcohol or illegal or non medically prescribed substances.
- Wilful neglect of duties and responsibilities.

## **Misconduct outside of the workplace**

The conduct of employees outside of the workplace may impact upon their role within the organisation, either in that their conduct brings the organisation into disrepute or that it affects the employee's ability to do his or her job. The Head of HR & OD (or nominated deputy) should be consulted in the following circumstances:

- Where an individual has been charged with a criminal offence.
- Where an individual has been convicted of a criminal offence.
- Where there is some doubt as to whether or not an individual has committed a criminal offence at work or related to their employment.

Criminal offences that will be of particular concern to Nottinghamshire Police include the following (the list is not exhaustive):

- Dishonesty, fraud, theft;
- Corruption,
- Violence,
- Bullying, harassment;
- Sexual assault.

It is appropriate that all cases should be reviewed on their merits before a decision on action is taken.

## **5. SUSPENSION**

There may be occasions when it is appropriate to suspend an employee on full pay. This action should be considered carefully. Suspension should always be considered in cases which have been assessed as gross misconduct although it will not always be necessary (e.g. if suitable proportionate restrictions can be put in place to prevent i) recurrence of the conduct, ii) interference with the investigation, and iii) manage any other relevant consideration).

In some cases a 'cooling off' period may be advisable. Similarly if an appropriate person is not available to suspend, then it may be advisable to send the employee home, until the following day. This will not amount to suspension of the employee. It is best to discuss these situations with a HR Advisor.

The decision to suspend normally rests with the Head of HR and OD or his/her nominated deputy. Suspension is a neutral act and supports both the employee and Force in managing the situation. A suspended employee must remain available during normal working hours and therefore must request approval from their line manager/supervisor if they wish to take annual leave or otherwise be unavailable.

It is recognised that a period of suspension can be stressful for both the employee and colleagues. The line manager must consider the appropriate support for people in their team during this period. Advice from the HR Department or Occupational Health Unit should be considered. The suspended individual should be allocated a specific contact within the Force; this may be the line manager or an alternative manager. The manager assigned as the specific contact will arrange for regular support and contact, which could

include referral to OHU or CIC. The contact should be at the minimum monthly, but more regularly if agreed, to ensure that the well being of the individual is maintained.

Employees must be advised that they are suspended and this should be followed with a letter from the Head of HR & OD or nominated deputy. The letter will confirm suspension from work and the reason for the suspension. Included with the letter advising suspension should be a copy of the Police Staff Misconduct Policy and the Police Staff Misconduct Procedure. The suspension should be for as short a period as possible but must provide sufficient time to allow a thorough investigation to take place. The suspension should be reviewed after one calendar month by the Head of HR & OD or nominated deputy, then regularly at intervals of no more than one calendar month. The employee should be advised in writing that their suspension has been reviewed and that it will continue. The letter should advise the next review date. If there is an update on the investigation, this can be briefly advised at this point.

Failure to be available will result in a review of suspension arrangements, which could result in suspension without pay.

Suspension will be considered in the following circumstances, although the list is not exhaustive.

- Potential gross misconduct.
- Where it is necessary to prevent the employee from interfering with the investigation (threatening or intimidating witnesses, preserve or prevent evidence being altered, amended or deleted).
- To prevent a likely repeat of the conduct in question.
- For the employee's safety or protection.

Should a trade union representative be suspended then the suspending authority must inform the local senior trade union official. This will normally be the Head of HR & OD or nominated deputy. If the suspension is of a senior trade union official, then contact should be with the regional trade union official.

A suspended employee will not be entitled to access any Nottinghamshire Police premises or documents, including remotely without permission from the Head of HR & OD or his/her nominated deputy. Managers must be mindful that the individuals will want to prepare for their disciplinary hearing and should manage the situation accordingly. This may be by allowing the suspended employees representative to contact witnesses to attend a disciplinary hearing.

The line manager should advise Information Services to suspend the employees LAN account and systems access. The employees ID card will be withdrawn and held by the line manager until the process is complete.

When an individual is suspended and if it is revoked then HR advise the following departments: Payroll, Information Services,, Vetting, HR Operations, and where a issue may / has media implications, the Corporate Communications team.

## **6. REPRESENTATION**

Employees have the right to be accompanied at a disciplinary hearing by a work colleague or trade union representative. Nottinghamshire Police allows employees to be accompanied at all stages of the process.

The role of the work colleague or trade union representative is to support the employee, not to respond to questions on their behalf. It is expected that employees will provide responses to questions during the investigation and hearing.

At a disciplinary hearing an employee's work colleague or trade union representative may address the hearing, sum up and put the case forward for the employee, respond on the employee's behalf to any view expressed at the hearing and confer with the employee during the hearing. They cannot respond to questions on the employee's behalf.

The ACAS Code of Practice allows for a work colleague or trade union representative to accompany the employee. It is possible that the person accompanying the employee may be a relative. It would be appropriate to reiterate the role of the person accompanying the employee to the employee and the person accompanying them. If they become overly emotional or disruptive to the proceedings it may be appropriate to take an adjournment. The IO or DO should remind all parties of their responsibilities. If the person accompanying the employee continues with inappropriate behaviour then it is acceptable to adjourn the meeting and ask the employee to have an alternative person to accompany them to the subsequent meeting/s.

## **7. SICKNESS**

Sickness absence does not necessarily preclude an individual from participating in, and assisting with, an investigation or attending a disciplinary hearing. Sickness absence should not prevent disciplinary issues from being progressed.

The employee should be made aware of the services of Occupational Health, trade union representatives and CIC. The Diversity Staff Support Associations may also provide support to an employee.

The employee may be offered the opportunity to provide a written statement, written questions may be sent to an employee requesting that they be answered and returned or alternatively the individual may appoint a work colleague or trade union representative to present their case. In all situations medical advice should be carefully considered in the handling of the disciplinary case. In such circumstances advice should be sought from a HR Advisor.

If an employee is absent due to sickness, a referral may be made to Occupational Health to ascertain whether the employee is fit to attend an investigatory interview or disciplinary hearing.

Sickness or other absence of the Investigating or Deciding Official should not automatically delay the process. Consideration should be given to appointing an alternative individual to investigate or hear the case.

The absence of an employee on sick leave should not preclude a hearing from taking place. If the employee cannot attend the hearing, they should be afforded the option of a written submission and/or an alternative mutually convenient location. It would be inappropriate to hold a disciplinary hearing in an employee's home.

## 8. TIMESCALES

AREA	TIMESCALES	COMMENTS
Suspension	1 calendar month	First review of suspension
Suspension Review	1 calendar month	Subsequent suspension reviews
Investigation	40 working days	To complete, however in exceptional circumstances this may take longer
Confirmation of date/time/venue of the disciplinary hearing	5 working days of indication of case to answer unless not practicable to do so	All documentation to be sent to the employee
Decision from hearing	5 working days of hearing	To provide employee with written confirmation of disciplinary hearing outcome
Appeal from employee	5 working days of receipt of written confirmation	Employee must appeal in writing to nominated official
Confirmation of date/time/venue of the disciplinary appeal hearing	10 working days of receipt of appeal	Relevant documentation sent to employee
Appeal hearing up to First Written warning	15 working days unless not practicable to do so	To convene an appeal hearing
Appeal of decision to dismiss	30 working days unless not practicable to do so	To convene an appeal hearing
Decision from appeal hearing	5 working days	To provide employee with written confirmation of disciplinary appeal outcome

## 9. DISCIPLINARY INVESTIGATION

The purpose of the disciplinary investigation is to establish all the relevant facts and whether there is sufficient information to support the allegation/s. The investigation should only look into the allegation/s. The investigation should not mix allegations with other performance, capability or attendance issues.

If additional issues are identified, this may require an additional investigation. This should be discussed with the HR Department before any action is taken.

The employee should be verbally advised that a disciplinary investigation is going to commence. This should then be confirmed in writing. (Contact the HR Case Management Team for an Investigation Confirmation letter template)

The investigation should include an interview with the employee, any witnesses and others as necessary, as well as the examination of relevant documentation.

### Points to consider when conducting a disciplinary investigation:



- Gather evidence promptly, this could include:
  - IT or electronic data
  - Letters, memos, emails, file notes, diary entries, voicemail, CCTV
  - Policies/procedures
  - Shift patterns, schedules
  - Staff handbook extract
- Identify witnesses and hold all interviews promptly to ensure that the individual's recollection of the facts is not diminished by time delays.
- Witnesses should be asked questions rather than being asked to provide a statement as a statement may not include all the relevant information.
- Keep questions to the allegation/s being investigated.
- The witness should always be given an opportunity to clarify or identify anything else that he/she has to say at the conclusion of any interview.
- A thorough investigation is a prerequisite of a correct investigation therefore it is important to ensure that all allegations are investigated.

The Investigating Official will write a report detailing the findings and including all the documentation to be used during the disciplinary hearing if there is to be one. The Investigating Official should not make a judgement on the outcome of their findings; this is the role of the official hearing the case at the disciplinary hearing.

### **Disciplinary Investigation Interview**

- Invite the employee to an investigatory interview by letter (Contact the HR Case Management Team for an Investigation Interview letter template) as soon as practical.
- Prior the interview it is advisable to collate questions that will support you to establish the relevant facts
- Ensure the venue is private and if possible, away from the employee's normal working area.
- Remember that employee's are allowed to be accompanied by a work colleague or trade union representative
- At the outset of the interview explain the process and that you are establishing the facts of the case. Explain that it is a disciplinary investigatory interview, read out the allegation/s, and state that it may result in a disciplinary hearing.
- In cases of gross misconduct advise the employee that one of the outcomes, if the case progresses to a discipline hearing, may be dismissal.
- At the interview take notes recording the questions and responses given. The notes should have marked on them 'these notes are not verbatim nor intended to be'.
- After you have covered all questions, ask both the employee and their work colleague/trade union representative if there is anything that they wish to add.
- Take a short adjournment to check your questions, the responses and any notes to see if anything has been missed.

- Ask the individual to read and sign the notes taken at the interview. If they refuse, note this on the document.
- Advise what will happen next (i.e. interview further witnesses etc). Then advise it may be necessary to interview the individual again depending on the rest of the investigation. Then close the interview.
- The notes of the interview will be used to produce a statement which will be sent to the individual for them to check, initial any amendments, sign as accurate and then return to the Investigating Official. The individual should not redact any statement made.
- If the individual does not return the interview notes signed within a reasonable period of time, then the interview notes maybe used without a signature.

## Questioning

To ensure that an unbiased investigation is conducted, the Investigating Official should focus on how information is obtained. Good questioning can be the key to a thorough investigation. It is important that the Investigating Official does not influence the outcome of the questions being asked by making inappropriate suggestions. Open, closed, probing questions should be asked as appropriate. Leading questions should be avoided.

**Example:** In the case of an allegation of ‘incapacity due to excess alcohol or drugs’

Questions to ask a witness could include:

- When you met ABC what could you smell? Rather than ‘could you smell alcohol?’
- How would you describe ABC’s behaviour? Rather than ‘did ABC behave as if drunk?’
- When did this take place? Rather than ‘Did this happen at work?’

Remember that the what, where, how, why, when questions can be very useful when conducting an investigation.

## Witness Interview

It is good practice to advise the line manager of the witness that they have been invited to attend an interview so that they are released from the workplace without any difficulty. It may be necessary to liaise with the line manager of the witness before setting up the interview to agree an appropriate time so as not to impact on the work of that area.

- Invite the witness(s) to an interview by letter (Contact the HR Case Management Team for a Witness Interview letter template) as soon as practical.
- Prior to the interview it is advisable to collate questions that will support you to establish the relevant facts
- Ensure the venue is private and if possible, away from the individual’s normal working area.
- Remember that Nottinghamshire Police offer individuals the opportunity to be accompanied by a work colleague or trade union representative
- At the outset of the interview put the individuals at ease and explain the process and that you are establishing the facts of the case and will not be making a judgement.

- Remind them of the confidential nature of the investigation and ask that they do not discuss the case outside of the meeting.
- Advise that it is possible that they may be requested to attend a disciplinary hearing and that the employee under investigation will receive a copy of their interview notes.
- At the interview take notes recording the questions and response given. The notes should have marked on them 'these notes are not verbatim nor intended to be'.
- After completing the questions, take a short adjournment to go through your questions, the response and notes to check whether anything has been missed.
- Ask the individual to read and sign the notes taken at the interview. If they refuse, note this on the document.
- Reconvene the witness interview and close the interview.
- The notes of the interview will be used to produce a statement which will be sent to the individual for them to check, initial any amendments, sign as accurate and then return to the Investigating Official. The individual should not redact any statement made.

If, after interviewing the employee and witnesses there are conflicting statements or inconsistencies then it should be explored further by re-interviewing the employee under investigation or re-interviewing witnesses to clarify accounts. It will be the role of the disciplinary hearing chair to make a decision on what they believe from the information provided to them.

## **10. INVESTIGATION REPORT**

When the investigation is concluded, the Investigating Official should complete a report including all the relevant facts and a summary of the findings. The file should include copies of all interviews, statements, emails, and all evidence found to establish the facts. (Contact the HR Case Management Team for an Investigation Report template document).

The report should summarise

- the conduct which is the subject of the investigation,
- the evidence of each witness interviewed,
- the response of the employee in question.

The Investigating Official should take care to avoid expressing his or her own opinion on the evidence e.g. suggesting that the employee's response lacks credibility or that a witness '*has no reason to lie*'. The Investigating Official must remain objective throughout and summarise the evidence in the same way.

The decision on whether there is a case to answer and whether it will progress to a formal disciplinary hearing rests with the Deciding Official. The DO will review the report and file and determine whether or not there is a case to answer.

## **11. DOCUMENTATION**

All the relevant paperwork collated during the investigation should be compiled with the report. The documentation should be referenced clearly. This will ensure that the DO can review all the documentation easily (if there is a disciplinary hearing). The following is a non-exhaustive list of what ought to be disclosed;

- witness statements and documentary evidence
- transcripts of interviews with the employee
- y documentation which supports the employee's case or undermines the complaint or incident in question
- documents which evidence the decision making process in the course of the investigation
- letters/emails to employee/witness/es (although it is not essential to include, it is good practice to ensure all documentation is collated and referenced appropriately)

**If the investigation does not result in a formal disciplinary hearing:**

- The employee will be advised by letter (Contact the HR Case Management Team for a 'no case found' letter template).
- A duplicate copy of this letter will be sent to the employee for their work colleague or trade union representative.
- Neither, the employee or work colleague/trade union representative will be given a copy of the investigatory report or documentation.
- The file and report will be kept for 12 months in the HR Department and then destroyed as confidential waste or shredded.

**If the investigation does result in a formal disciplinary hearing:**

- The employee must be advised by letter that there is a case to answer and that there will be a disciplinary hearing. Include a copy of the Police Staff Misconduct Policy and Procedure with the correspondence. (Although the employee may have had copies of the policy and procedure at the outset of the investigation, it will ensure they have a copy for the disciplinary hearing.)
- A duplicate copy of the letter will be sent to the employee for their work colleague or trade union representative. Include a duplicate copy of the Police Staff Misconduct Policy and Procedure with the correspondence.
- The employee (duplicate letter for work colleague or trade union representative) must be advised in writing that a disciplinary hearing will be held including the date/time/venue of the disciplinary hearing. A minimum of five working days notice should be provided. The letter must also include the allegations that have been investigated.
- The employee must be provided with two copies of the disciplinary file at least 5 working days prior to the disciplinary hearing.
- It is advisable to deliver the letter in person or by recorded delivery.

**Contents of the file**

It is advisable to include the Investigating Official's report with the file prior to the hearing.

- Contents page
- All correspondence relating to the investigation

- All the documentation including witness interview/s and employee interview/s
- Policies/procedures/staff handbook as appropriate

### **Disclosure of witness interviews/statements or sensitive information**

It is possible that information obtained during the investigation is of a sensitive nature. This could include names, addresses or restricted documents. How these should be managed should be discussed with the HR Partner. Information may be redacted prior to disclosure to the employee and their representative.

Transcripts of telephone calls may be disclosed however it is critical that sensitive information and/or information that could identify the caller is redacted.

There may be exceptional occasions where it is not appropriate to disclose the name of a witness. The information provided by the witness may be disclosed but all information contained in the witness statement/interview which could identify the witness must be redacted. If the employee wants to ask questions of the witness that cannot be identified, it would be acceptable to ask the employee to provide a written list of questions which the Deciding Official will put to the witness. Written responses will be provided to the employee, again with any identifying information redacted.

## **12. THE DISCIPLINARY HEARING**

The role of the Deciding Official is:

- To chair the disciplinary hearing and allow the Investigating Official and the employee to have a fair opportunity to put forward their case.
- To allow adjournments as necessary.
- To question and challenge evidence provided
- To take all questions through the chair if necessary to provide a fair hearing.

The DO will normally be supported by a HR Advisor who will provide procedural advice to them. The HR Advisor may provide clarity to all parties present on procedural issues.

### **Witnesses**

Relevant witnesses can be asked to attend a disciplinary hearing. The DO should decide if it is necessary for a witness to attend. It is only appropriate for a witness to attend the disciplinary hearing if their evidence is material to the allegation of misconduct/gross misconduct.

Both the employee and trade union representative or work colleague and the Investigating Official should provide a list to the Deciding Official of the witnesses they consider should attend the hearing. This must be done at least 24 hours in advance of the hearing. If there is any dispute regarding witnesses, the DO will allow either party to make a written submission to support their request. There is no necessity for character statements to be presented at a hearing or for character witnesses to attend a disciplinary hearing. Any witness should only be called into the hearing when required and cannot be present throughout the hearing.

### **Hearing Procedure**

The DO will:

- Open the hearing and advise that it is a disciplinary hearing;
- Introduce all parties present and explain roles;
- Read out the allegation/s that have been investigated to ensure clarity;
- In cases of gross misconduct advise the employee if the case is found, that one of the sanctions that can be applied is dismissal without notice;
- Outline the process that will be followed (Contact the HR Case Management Team for an outline Hearing Procedure);
- Advise that adjournments may be requested and that the DO may take an adjournment at anytime;
- If the employee is not accompanied, check that they understand their right to be accompanied, and ask once again if they would like a work colleague to be present;
- Advise that the DO has a note taker (these will not be verbatim) and that the employee may also take notes.

The DO will conduct the hearing. The IO will read their brief summary of the case. The IO is not expected to read their whole report but provide a summary to the DO. The DO summarises case evidence, calls witnesses and questions the employee and any witnesses. The employee/representative will have an opportunity to ask questions of any witnesses. In cases of bullying or harassment for example it may be appropriate for questions to go through the chair rather than directly from employee or work colleague/trade union representative to the witness.

Once all the evidence has been provided the DO must allow the employee or work colleague/trade union representative to sum up their case and the DO will then adjourn to make a decision. The employee and the work colleague/trade union representative will be advised to be contactable so that the hearing can be reconvened to present the decision. In complex cases it may be necessary for a longer adjournment as a decision may not be made on the day. Any new date/time should be arranged and communicated to the parties before they leave to avoid any unnecessary delay. It is appropriate for the decision to be made in person and then confirmed with a letter rather than just in writing.

### **Decision making**

The DO must consider all the information that has been put forward including any mitigation. If there is contradiction in any of the information, the DO must decide what to believe and have a rationale for that belief.

The DO must decide whether or not a matter happened on the balance of probabilities. This means considering whether it is more likely than not that a point is factually correct.

If the DO does not believe that the investigation is complete then the hearing can be adjourned whilst further investigations take place. This should, however, only be considered in exceptional circumstances where the information could not reasonably have been available at the time of the first hearing.

If the DO decides that the allegation/s is/are not found, then the case is closed with no action. The employee should be advised and this should be confirmed in writing.

If DO decides that the allegation/s is/are found, then the range of sanctions must be reviewed. Before deciding upon the sanction, consideration must be given to the following:

- Sanctions given for similar allegations in the force.
- Any mitigation put forward.
- The employee's past record including whether there are any 'live' warnings on file.
- Any other extenuating circumstances.

The sanctions open to the DO are:

- No sanction
- Formal Verbal Warning
- First Written Warning
- Final Written Warning
- Dismissal with Notice
- Dismissal without Notice.

The hearing should be reconvened to deliver the decision in person to the employee and his/her representative. This will then be followed up with a letter (Contact the HR Case Management Team for Disciplinary Hearing Outcome letter template) within five working days of the decision being given verbally. Two copies of the letter should be sent.

The letter will contain the following information:

- the date of the hearing and those present,
- the allegation/s,
- a brief rationale for the decision,
- in cases of warnings the improvement that is required and when it may be reviewed,
- duration of the warning,
- consequences of failure (especially important for final written warnings when dismissal may be a possibility)
- the right of appeal - including to whom the appeal should be made and by when.

Additionally in cases of dismissal, the reason for the decision takes on further importance and the letter should provide this. Where it has been necessary to resolve disputes of fact, the DO should set out the relevant rationale and in particular, why they preferred the evidence of one witness over another. If the 'preferred' witness has been inconsistent in some part of the evidence, the DO should set out what impact this had on their view, and their reasons for coming to the conclusion in question.

In cases of dismissal without notice, the employee will be required to return Nottinghamshire Police property including; ID card, swipe card, car park pass, laptop, blackberry, mobile phone etc in their possession within five working days.

There are occasions where dismissal would include a notice period. This could be when an employee has a 'live' final written warning and is dismissed for further misconduct or if the dismissal is for 'some other substantial reason'. In this situation the DO should discuss the notice period, whether notice is paid in lieu, payment for annual leave and the

additional information required in the letter to the employee. Nottingham Police property must be returned by the employee's last day at work.

If any monies are to be recouped from an employee who has been dismissed as a result of the process, this should be addressed under separate correspondence.

### **13. THE APPEAL**

The Acas Code of Practice gives employees the right of appeal. The appeal is not an opportunity for the case to be reheard but is a review by the Appeal Official of whether or not the process or the decision was reasonable in all the circumstances.

The reasons for an appeal can include:

- Severity of the sanction imposed;
- New evidence that could not reasonably have been considered at the disciplinary hearing;
- Serious breach of procedures or other unfairness which could have affected the finding or outcome.

The appeal hearing will be chaired by the Appeal Official, a more senior person than the original Deciding Official.

The employee should write to the Appeal Official and clarify the grounds upon which he/she is appealing the decision and identify the particular part of the decision which he/she alleges is unreasonable. If further evidence is to be provided, the employee should set out what that evidence is and provide copies of any supporting documents. It would be helpful if the employee explained at the appeal why the additional evidence was not made available at the disciplinary hearing.

The Appeal Official will decide whether or not the new evidence could have been considered at the hearing, and if it could not, then the additional evidence should be allowed to be put forward unless it is not relevant.

The Appeal Official will write to the employee to invite them to attend a disciplinary appeal hearing. The letter should advise the date/time/venue and who will be present at the disciplinary appeal hearing (excluding witnesses). (Contact the HR Case Management Team for an Appeal Hearing Letter Template)

The Appeal Official will:

- Open the hearing and advise that it is a disciplinary appeal hearing and not a rehearing of the case;
- Introduce all parties present and explain roles;
- Read out the outcome and date of the disciplinary hearing and the allegation/s that have been investigated;
- Outlines the process that will be followed;
- Confirm any decisions that have been made prior to the start of the hearing;
- Advise that adjournments can be requested and that the Appeal Official may take an adjournment at anytime. If the employee is not accompanied, check that they understand their right to be accompanied;
- Advise that the Appeal Official has a note taker and that the employee may also take notes;



- Advise the options that are open to them
  - Dismiss the appeal
  - Uphold the decision and disciplinary sanction
  - Amend the sanction including increase, decrease or rescind the original disciplinary sanction.

The decision should be given verbally and confirmed with a letter within five working days.

#### **14. GRIEVANCES RAISED DURING THE DISCIPLINARY PROCESS**

It is possible that an employee subject to a disciplinary investigation may raise a grievance. It should not be the norm to suspend the disciplinary investigation to investigate the grievance.

The grievance should be logged with the HR Department as per normal. If the grievance is regarding the disciplinary investigation then it is likely that the points may be considered by the Deciding Official and/or Appeal Official. In all cases, discuss the grievance with a HR Advisor before determining any action. The options available are:

- The grievance may be considered at the completion of the disciplinary process.
- The disciplinary process may be suspended whilst the grievance is investigated.
- The grievance is essentially part of the disciplinary investigation and will therefore be investigated as part of the disciplinary investigation process.

#### **Resignation during the disciplinary process**

If an employee resigns whilst the disciplinary process is ongoing it does not automatically halt the process. There are other factors which need to be considered including whether notice has been given, whether other employees are also subject to a disciplinary investigation or whether there are criminal investigations ongoing.

Employees can resign with immediate effect or give the required notice. If the resignation is accepted and the disciplinary process is halted, then the employee must be advised that any employment reference will include that they resigned during the disciplinary process which was not completed. If the employee gives notice, then the disciplinary proceeding should continue up to and including a disciplinary hearing which can be held in their absence if necessary. Discuss the matter with HR Advisor to ensure the correct process is followed.

#### **Character references**

Character references will not be accepted as part of the evidence put forward by the employee. Both the Investigation Official and the Deciding Official will decline to accept character references as they have no bearing on the case.

#### **Tape Recording**

There is often the question of whether interviews/meetings should be tape recorded. There is no requirement for tape recorded interviews. Both parties are able to take comprehensive notes. If either party want an interview to be tape recorded, a formal request to the Senior HR Manager or nominated deputy should be made.

## **Employees who are also special constables**

In the event of an employee who is also a special constable being subject to an allegation of misconduct, consideration will be given to when the alleged incident or complaint occurred and in which capacity the individual was working.

Before any action is taken, the Senior HR Manager will discuss with PSD the appropriate way forward. PSD will undertake to investigate if the incident occurred whilst the individual was working as a special constable. If the incident occurred during regular employment then the Police Staff Misconduct Policy & Procedure should be followed.

If a sanction is applied by PSD or after the Police Staff Misconduct hearing has taken place. The Senior HR Manager will discuss with PSD if there are any implications to their employment or activity as a special constable.

## **Support**

The Investigating Official and the Deciding Official will be supported by a representative of HR from the case management team. There may be occasions when investigating a particularly sensitive case that additional support is required. This should be discussed with the HR Advisor who may refer the case to the HR Partner.

There may be occasions where the Investigating Official or the Deciding Official requires wellbeing support. Confidential Care (CIC) provide confidential counselling, help and information services which is available 24 hours a day, 365 days a year on 0800 0832810. The number is free from landlines. More information can be found via the intranet.

## **SECTION 3 LEGISLATIVE COMPLIANCE**

This document has been drafted to comply with the general and specific duties in the Equality Act 2010; Data Protection Act; Freedom of Information Act; European Convention on Human Rights; Employment Act 2002; Employment Relations Act 1999, and other legislation relevant to policing.