

**Isle of Man Government
Department of Health and Social Care**

Disciplinary Procedure

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Department of Health and Social Care

Disciplinary Procedures

1. Policy statement

The Department of Health and Social Care (DHSC), recognises that the maintenance of discipline is essential to ensure efficiency of operation and the safety and well being of all employees.

The Disciplinary procedure will apply equally to all employees of the Department of Health and Social Care excluding Civil Servants and employees employed under and by analogy to the terms and conditions of the IOM Whitley Council.

This procedure will apply to Dentists and Medical Doctors only where the complaint about them is non clinical in nature. Where provisions exist within their Professional Regulatory Council to deal with clinical issues they are also excluded.

2. What is a Disciplinary Procedure?

A Disciplinary Procedure is a procedure for organisations to follow which enables them to deal with cases of misconduct or unsatisfactory performance. It helps employers deal with disciplinary cases fairly and consistently.

3. Purpose and Scope

- 3.1 The overall aim of this procedure is to help **correct** inappropriate behaviour/conduct of employees.
- 3.2 The Procedure is designed to encourage all employees to achieve and maintain standards of conduct, attendance and job performance expected of employees and to provide a method of dealing with alleged breaches and deficiencies in a manner which is consistent and fair.
- 3.3 It is important that all employees should know what standards of conduct are expected of them.
- 3.4 It is important that disciplinary cases are considered against a full understanding of the facts of the case and any mitigating circumstances are considered before deciding the outcome.

4. Principles underpinning the Procedure

The following principles apply in all cases of alleged misconduct or poor performance.

- 4.1. Wherever possible attempts will be made to resolve problems of misconduct or poor performance at an informal level before proceeding to the formal disciplinary procedure.
- 4.2. No disciplinary action will be taken until the case has been fully investigated and the facts of the case have been established. Any disciplinary penalty awarded shall be reasonable in relation to the misconduct or poor performance.
- 4.3. The hierarchy of penalties within the procedure is not intended to be sequential and a judgement will need to be made on the level of sanction appropriate in the circumstances.

- 4.4. No employee will be dismissed for a first breach of discipline except in the case of gross misconduct.
- 4.5. An employee will have the right of appeal against any disciplinary penalty imposed. The appeal will be heard by a more senior manager(s) than that taking the disciplinary action and this decision will be final.
- 4.6. Should any disciplinary action be reconsidered and effectively withdrawn, any written reference to it should be removed from the employee's personal file and the employee notified accordingly.
- 4.7. Confidential records of any disciplinary procedures and the outcomes will be kept by the Office of Human Resources for an appropriate period.

5. Informal Discussions

- 5.1. Line managers and supervisors should develop and foster trusting relationships with their employees to enable them to discuss freely any problems that arise. Wherever possible, problems and issues should be resolved without recourse to the formal procedure. There should be an attempt to gain commitment from the employee to improve.
- 5.2. A manager should decide whether a particular case can be more constructively dealt with by informal discussions whereby the manager and employee will meet and the required standard of conduct will be emphasised. This will be undertaken on a one to one basis and a note may be made of any actions that have been agreed on.
- 5.3. During these discussions it is advisable to agree specific targets for improvement and dates for review. At this stage it may also be necessary to consider whether the employee requires any additional support or training in order to meet the required standards. Where agreed targets are not met without reasonable explanation and there is not sufficient improvement it may be necessary to progress to the formal procedure.
- 5.4. These discussions are an informal method of resolving problems and do not form part of the formal procedure.

6. Formal Procedure

Investigation

- 6.1 Under the formal procedure there must be a full investigation of the facts relating to the alleged offence and any possible mitigating circumstances should be taken into consideration. The format of the investigation will depend upon the nature of the allegations. For straightforward cases the line manager may not be required to produce an investigation report. However, the employee should be provided with copies of the evidence collected in respect of the allegation prior to a hearing taking place.
- 6.2 For more complex or serious cases, or where the line manager is too close to the alleged offence, an Investigating Officer may be appointed. Wherever possible or practicable the Investigating Officer will be from within the organisation. However, in exceptional circumstances an external Investigating Officer may be appointed. A full report of the investigation will be produced including all the relevant evidence and concluding whether or not the Investigating Officer recommends that a disciplinary hearing is held.

Disciplinary Hearing

- 6.3 Where the investigation concludes that there is sufficient evidence to suggest that the matter should be taken further a disciplinary hearing will be convened. The case will be heard by a hearing officer or panel of up to three people. The hearing officer may be the employee's supervisor or line manager, or other more senior manager if appropriate and may seek advice from HR or other professional advisor. Where dismissal is a possible outcome the hearing officer or panel should have authority to dismiss (advice on this can be obtained from the Office of Human Resources.).
- 6.4 The purpose of the disciplinary hearing is to consider what disciplinary action, if any, is appropriate in all the circumstances. The employee should be given at least 5 working days notice in writing of the hearing (See Appendix B for sample letter) and be notified of his/her right to be accompanied by a trade union representative or colleague, if he/she wishes.
- 6.5 It is preferable to agree a hearing date in advance with the employee and their representative. However, where this has not been possible it would be reasonable to allow the employee to postpone, normally no later than 5 working days after the original date, to enable their representative to attend.
- 6.6 Prior to the hearing the employee will be provided with details of the alleged offence and copies of the evidence collected, including all witness statements, in respect of the allegation. During the hearing the employee should be given the opportunity to give an explanation and offer details of any mitigating circumstances.
- 6.7 The box on the following page gives a model procedure for the running of a disciplinary hearing. This is intended to provide guidance only and variations on this model will not automatically constitute breach of this procedure.

Model Procedure - Disciplinary Hearing

- Introduce those present to each other. Explain the purpose of the meeting and how it will be conducted.
- **Statement of complaint** - the case against the employee should be put. The employee (or his/her companion) and the hearing officer / panel may ask questions on the evidence given or any witnesses.
- **Employee's reply** - the employee (or his/her companion) should put his/her case and should be allowed to call witnesses. The person putting the case against the employee and the hearing officer / panel may ask questions of the employee and witnesses. **Please note: Witnesses will be excluded from the hearing except when giving evidence and answering questions.**
- Adjournments should be used as required throughout the hearing. Either party may request an adjournment if necessary.
- **Summary** – Summarise the main points. The person putting the case against the employee and the employee (or his/her companion) may sum up their case if they wish. Ensure the employee has had an opportunity to give an explanation for the misconduct or any special circumstances which should be taken into account.
- **Adjournment** - the hearing should be adjourned to allow the hearing officer / panel to consider all the evidence. The hearing officer / panel must come to a clear view on the facts and, if they are disputed, decide on the balance of probability which version of the facts is true. (In internal disciplinary proceedings the evidence need only be sufficient to provide reasonable grounds for believing the alleged offender to be guilty of the charge against him/her. This is different to a court of law where guilt must be proved beyond reasonable doubt.)
- The hearing officer/ panel should deliberate in private. The notetaker and any HR advisor may remain present but will not be part of the decision making process.
- If it is concluded that on the balance of probabilities the offence has been committed the hearing officer / panel must ensure they have given the employee the opportunity to give any mitigation if none has been given already.
- **Decision** - Once the decision has been made the hearing should be reconvened and the employee should be advised of the decision. If it is considered that the employee is not guilty of the alleged offence he/she should be advised of this and that no further action shall be taken. In addition, all records of the allegation, the investigation and the hearing should be removed from his/her personal file. If it is considered that the allegation is proven and the employee is guilty he/she should be advised of this and informed of the disciplinary penalty to be imposed, the length of time it will remain valid and the right of appeal. The decision should be confirmed in writing.

Disciplinary Penalties

- 6.8 If it is considered that the employee is guilty of the alleged offence the hearing officer / panel must decide on the penalty to be awarded. They should take account of -
- the gravity of the offence
 - any mitigating circumstances which might make it appropriate to lessen the severity of the penalty

Warnings

- 6.9 A number of levels of disciplinary warning are available as a penalty - oral warning, written warning and final written warning.
- 6.10 In the case of minor misconduct the first warning will normally be an oral warning. Where an oral warning has been ineffective or where the alleged misconduct is more serious it may be decided to give a written warning. Where previous warnings have been ineffective and misconduct continues, or the nature of the offence is of a serious nature final written warning may be given.
- 6.11 The hierarchy of warnings is not intended to be sequential and a judgement will need to be made on the level of sanction appropriate in all the circumstances, including taking into account any mitigating circumstances.

Time Limits on Warnings

- 6.12 Formal Disciplinary warnings will ordinarily be disregarded for any subsequent disciplinary purpose after a specified period of satisfactory service. That period should be stated on the letter confirming the warning and will usually be:

Oral Warning	6 months
Written Warning	12 months
Final Written Warning	12 months

- 6.13 There may be occasions where an employee's conduct is satisfactory throughout the period the warning is in force, only to lapse very soon afterwards. Where a pattern emerges and there is evidence of abuse an employee's disciplinary record should be borne in mind when deciding how long any current warning will last.
- 6.14 Following a decision the hearing should be reconvened and the employee must be advised that the case against him/her has been proven and advised of the disciplinary penalty to be imposed.
- 6.15 The employee should be advised of the right of appeal, how to submit it and to whom, and the right to be accompanied by a trade union representative or other representative at any appeal hearing.
- 6.16 The employee should be advised that any repetition of a similar act or of a subsequent different offence may result in further disciplinary action.

- 6.17 The employee should be advised that a record of the disciplinary proceedings will be held on his/her personal file throughout the period that any warning is in force and then removed. A confidential record may be kept by the Office of Human Resources.
- 6.18 All parties attending a disciplinary hearing should note that the proceedings, including the nature of any penalty awarded, are confidential and should not be discussed with any third parties.

Dismissal

- 6.19 If the employee's conduct or performance still fails to improve in spite of the warning(s) given, or if the allegation is of gross misconduct it may be necessary to consider dismissal.
- 6.20 The employee should be informed of the reason for dismissal, the date on which the employment contract will be terminated, the appropriate period of notice and their right to appeal. An employee who is dismissed for gross misconduct (See Appendix A) will be dismissed without notice or payment in lieu of notice with effect from the date of the decision being communicated.

Other Action short of Dismissal

- 6.21 Suspension without pay for a maximum of five working days may be considered as an alternative penalty or in addition to another penalty. A suspension plus reason should be confirmed in writing within 24 hours of suspension being affected and a Change of Circumstances form sent to HR and payroll.
- 6.22 Where appropriate demotion to a lower graded post may be used as an alternative disciplinary penalty, or in conjunction with another penalty. This penalty may only be considered where such a post exists and following discussion with Human Resources. The letter confirming the penalty should indicate the reasons for choosing this course of action.

7. Suspension

- 7.1 Where it is alleged an employee has committed an act of gross misconduct (see Appendix A for examples) he/she may be suspended on full pay by an appropriate senior manager while the matter is fully investigated. For the purposes of this procedure full pay is defined as full basic pay and allowances that are a permanent feature of basic pay.
- 7.2 Normally in such circumstances, the period of suspension should not exceed 28 working days but may be extended if it has been decided to await a decision of the courts in relation to an alleged breach of law, or where it is impractical to conduct a full investigation and/or arrange a disciplinary hearing within this period.
- 7.3 In cases where there is strong prima facie evidence relating to the misappropriation of public funds or where an employee has been charged and remanded in custody awaiting trial, pay during suspension may be withheld in whole or in part.

8. The right to be accompanied

- 8.1 Employees have a statutory right to be accompanied by a companion where they are required by their manager to attend a disciplinary hearing. The Companion may be a

fellow worker, an official employed by a trade union, or a lay trade union official (who may be recognised or not).

- 8.2 Managers should also consider whether it might be reasonable to allow the employee to be accompanied by an additional companion due to individual needs. For example staff whose first language is not English may need an interpreter, disabled staff may need assistance because of their disability.
- 8.3 Fellow workers or trade union officials do not have to accept a request to accompany a worker, and they should not be pressurised to do so.
- 8.4 A fellow worker who has agreed to accompany a colleague is entitled to take a reasonable amount of paid time off to fulfil that responsibility. This should cover the period of the hearing and it is also good practice to allow time off to accompany an employee immediately before and after the hearing.
- 8.5 The companion should be allowed to address the hearing in order to put the employee's case and sum up the employee's case, if the employee wishes them to.
- 8.6 The companion can also confer with the employee during the hearing. It is good practice to allow the companion to participate as fully as possible in the hearing. However, the companion **cannot** answer questions on behalf of the employee.

9. Appeals

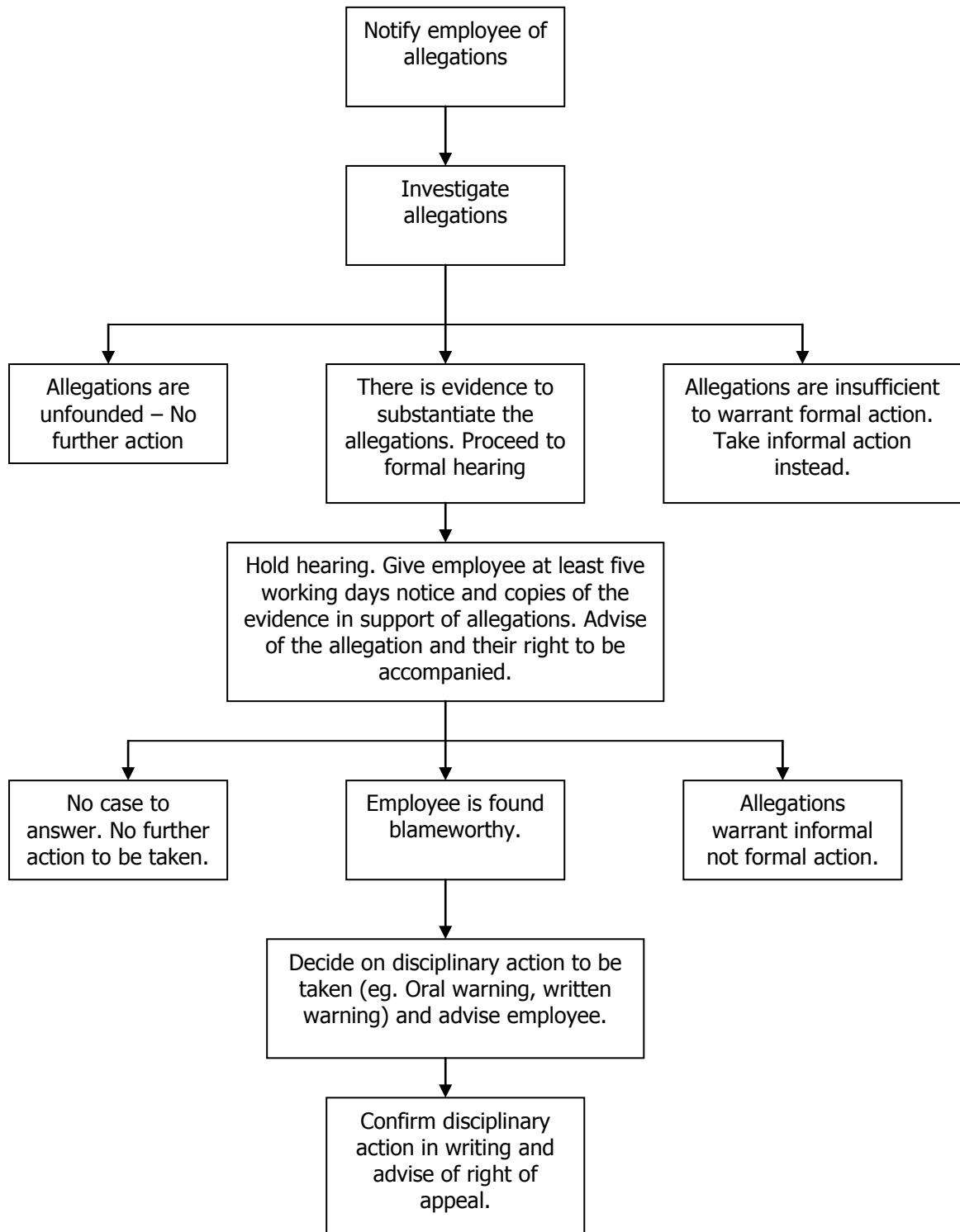
- 9.1 Employees who have had disciplinary action taken against them should be given the opportunity to appeal. The following are examples of grounds for appeal:
 - a) That the original hearing was in some way procedurally unfair
 - b) That the decision to find the employee blameworthy was perverse
 - c) That the type of warning or disciplinary penalty imposed was excessive in relation to the offence for which the employee was found blameworthy and/or in light of the mitigating circumstances
 - d) That new evidence of a material nature has come to light after the original hearing
- 9.2 Appeals must be lodged in writing stating the grounds for appeal within 7 days of the date of the written confirmation of the warning, dismissal or other penalty.
- 9.3 The purpose of the appeal hearing is to review the decision of the disciplinary hearing panel, where the employee has grounds for requesting this.
- 9.4 At the appeal hearing particular attention should be paid to any new evidence that was not available earlier and the parties should be given the opportunity to comment on it. It may be appropriate in some cases for the hearing to be adjourned to allow for such evidence to be investigated or for the matter to be referred back to the manager against whose decision the appeal has been lodged.
- 9.5 The appeal will be heard either by a manager or panel more senior in authority than that which took the original decision. Where a panel is appointed it will normally comprise of 2 or 3 persons, one of whom may be a member of the Professional body (where relevant), with no previous knowledge of, or involvement in the case. HR will also be present in an advisory capacity only, and a notetaker will also be present.

- 9.6 The employee shall be given notice in writing at least 5 working days in advance of the time and place of the hearing and shall be allowed to be represented by a companion (who may be a work colleague, a recognised trade union representative/official of his/her choice) and shall be entitled to call witnesses and produce documents relevant to his/her defense at the hearing.
- 9.7 The box on the following page gives a model procedure for the running of an appeals hearing. This is intended to provide guidance only and variations on this model will not automatically constitute breach of this procedure.

Model Procedure - Appeals Hearing

- Introduce those present to each other, explaining why they are present if necessary. Explain the purpose of the meeting and how it will be conducted.
- All parties should have relevant records and notes of the original hearing.
- The Chair of the panel from the disciplinary hearing should explain how the decision was reached at the original hearing.
- The appellant (or his/her companion) and the person or panel hearing the appeal may ask questions.
- The appellant (or his/her companion) should explain why they are appealing against the decision and may call witnesses.
- The person or panel hearing the appeal may ask questions of the appellant and his/her witnesses. **Please note: Witnesses will be excluded from the hearing except when giving evidence and answering questions.**
- The Chair of the disciplinary hearing and the appellant (or his/her companion) may sum up their case.
- The person or panel hearing the appeal adjourn to consider the case.
- The person or panel hearing the appeal should deliberate in private. The notetaker and any HR advisor who is present may remain present but will not be part of the decision making process.
- The person or panel hearing the appeal should reconvene to announce the decision to the parties personally confirming the decision in writing. It should be made clear that the decision of the person or panel hearing the appeal is final.

10. Flowchart of the Disciplinary Procedure Formal Process



Gross Misconduct

The list is not intended to be fully comprehensive or inclusive of all matters which might lead to dismissal or disciplinary action under the terms of the Disciplinary Procedure. It is intended to give examples of the types of offences that if committed on a single occasion could lead to dismissal.

- a. Any theft or attempted theft arising in the course of a person's duties or their presence on public premises. This includes theft from patients, clients, staff or visitors.
- b. Fighting, physical assault or the threat of same whilst on duty which interferes with the discharge of duties or brings the Department into disrepute, or is outside normally accepted standards of behaviour.
- c. Contravention of rules of Statutory and Professional Bodies.
- d. Intoxication induced by alcohol or drugs (not prescribed by a medical practitioner) while on duty or liable to be called for duty.
- e. Breach of confidentiality e.g. Tenders, medical records, staff references etc. except where these are 'protected disclosures'
- f. Unauthorised sleeping on duty.
- g. Endangering the health of others by wilfully ignoring procedures laid down for safe conduct under the terms of current Health and Safety legislation.
- h. Unauthorised use or wilful damage of the Departments equipment, premises or facilities.
- i. Unauthorised use of the Department's computer equipment or the use of personal computer software on Department equipment including inappropriate use of email or internet facilities or contravening the email acceptable use policy.
- j. Gross negligence or wilful neglect of duty sufficiently serious to warrant dismissal.
- k. Giving false information or falsifying documents at the time of appointment, or at any subsequent time during employment, which materially affect suitability to work for the Department.
- l. Obscene behaviour.
- m. Fraud (including fraudulent clocking offences and falsification of records) and breaches of confidentiality.
- n. Criminal conviction arising from an offence committed within or outside of normal working hours and where the offence is of a nature so as to render the employee unsuitable for the type of work employed or unacceptable to other employees. An offence of unlawfully possessing a controlled drug will be deemed in all cases to be an offence of such a nature.