

**March 2016**

**HUMAN RESOURCES**

# **Procedure for Managing Discipline**

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## I Introduction

- I.1 The disciplinary procedures apply to all employees except for Chief and Deputy Chief Officers and employees in the Children's Services Directorate who are employed in schools to whom separate procedures apply.
- I.2 Where the individual is a trade union official, no disciplinary action beyond a verbal warning (or suspension from duty in the case of gross misconduct) will be taken until the circumstances of the case have been discussed with a relevant full-time official and Chief Officer from Human Resources.
- I.3 Where the behaviour complained of concerns an apparent failure of performance rather than of conduct, then the capability procedure will be appropriate.
- I.4 Issues of misconduct affecting Employees on probation will generally be dealt with under the probation procedure

### General Principles

- I.5 Disciplinary procedures are intended to help ensure that the general standards of conduct laid down for staff across Royal Greenwich are observed and that fair and effective arrangements exist for dealing with alleged offences.
- I.6 The disciplinary procedures are exercised by the Chief Officers, who normally delegate conduct and disciplinary matters to appropriate managers. The minimum levels of management with authority to take formal action are:

Written warnings	Managers of at least SO1 grade
Final warnings	Managers of at least P05 grade
Dismissal or other serious penalty	Managers of at least P07 grade

- I.7 In no circumstances may formal disciplinary penalties be imposed by line managers. The procedure must be followed with a proper investigation and hearing.
- I.8 In following these procedures, the following principles will be observed:
  - No disciplinary action will be taken until the matter has been fully investigated unless clear admissions have been made which make further investigation unnecessary (precautionary suspensions do not constitute disciplinary action)
  - The individual will have an opportunity to hear the case against them and state their case
  - The individual has the right to appeal against dismissal or other disciplinary action

- The individual has the right to be accompanied by their trade union representative or a work colleague at all stages of the formal disciplinary procedure
- 1.9 It is contrary to Royal Greenwich's policy to discriminate against an employee on any of the protected characteristics covered under the Equality Act [2010], that is based on age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion/belief, sex and sexual orientation. Also any other forms of discrimination whether because staff work part time or in any way which affects the employment of any person across Royal Greenwich. Any action which is contrary to that policy is a serious matter and may lead to a disciplinary penalty. It may also be a breach of the law for which the individual concerned may be held personally liable.

## **2 What constitutes a disciplinary offence?**

- 2.1 Minor disciplinary offences - Line management should deal with minor disciplinary offences on the spot by administering an informal or oral warning. Often matters, if tackled early enough, will be nipped in the bud so the formal disciplinary procedure will not be required. This lets the individual know that their conduct is not acceptable and that if they do not improve they will be subject to the formal disciplinary procedure. Both parties should understand that informal action is not part of the formal disciplinary process and that employees do not have a statutory right to representation. Where the need for improvement is identified, the manager should explain what needs to be done and how conduct will be reviewed. Brief confidential notes should be kept by the line manager on any agreed informal action.
- 2.2 The following is an indication of the kinds of conduct that may lead to formal disciplinary action, regardless of whether there has been an offence in law, and whether or not civil or criminal legal proceedings are being instituted. The list is not comprehensive and does not preclude the possibility of additional charges being brought: A breach of official instructions (including safety regulations, formal policies, security instructions, office or local notices, or in any other written or oral authoritative form):
- 2.3 Misconduct of any kind which may have an adverse effect on the working of Royal Greenwich or subject it to unfavourable criticism
- Betting or gaming on official premises
  - Bad time-keeping and/or attendance
  - Lending and borrowing money. Staff must not lend money to another member of staff at interest. Borrowing money from a junior member of staff is a disciplinary offence. It is a very serious offence for staff to attempt to borrow money from people with whom they have come into contact through their official duties
  - Private trading on office premises. Canvassing for trade (including the display of mail order catalogues) on official premises is not allowed in any form. In certain

circumstances some limited trading may be allowed, but specific approval is required in each case from local management

- Loss or misuse of Royal Greenwich's property, premises, vehicles and internet or e-mail facilities. Any failure to take all reasonable care may lead to disciplinary action
- Misuse of official stationery, equipment and materials
- Negligence
- Absence without authority. In addition to forfeiture of pay for the absence(s), disciplinary action will be considered against any individual who has been absent without authority
- Misbehaviour; such as causing harassment, alarm or distress to another member of staff
- Harassment and bullying. Any conduct which is offensive, humiliating, embarrassing or intimidating to other members of staff or to people with whom contact is made in the course of official duty is not acceptable
- Failure to carry out reasonable duties or obey reasonable instructions

2.4 The Staff Code of Conduct should be referred to when dealing with disciplinary matters.

### **3 Gross Misconduct**

3.1 Gross misconduct is misconduct serious enough to entitle Royal Greenwich to terminate a contract of employment and to dismiss without notice. The general test is whether the misconduct has disregarded the essential conditions of the employment contract. The following list of examples of gross misconduct is not exhaustive:

- the acceptance of bribes, involvement in corruption or misuse of official position
- deliberate actions, omissions or negligence which cause or may cause loss, damage or injury to Royal Greenwich or its staff's operation, reputation or property, premises or vehicles
- a breach of Equal Opportunities Policy
- fighting, assault or aggressive behaviour on or towards another person
- harassment or bullying
- an act of insubordination e.g. offensively or aggressively refusing to carry out a reasonable request
- staff found in breach of alcohol, drugs and smoking policies
- misuse of the computer, e-mail or internet system e.g. deliberately obtaining access to unauthorised or pornographic data/images
- an act of dishonesty including theft, fraud or deliberate falsification of records
- a breach of health and safety rules

- unauthorised disclosure of confidential information
- 3.2 In addition, conduct listed as misconduct, if repeated after warnings, may also constitute gross misconduct. The Staff Code of Conduct should be referred to when dealing with disciplinary issues.
- 3.3 If allegations constitute gross misconduct, this will be made clear to the employee in writing. The formal procedure will then be followed. If it is decided by a disciplinary panel that the allegations are proven, then in the absence of sufficient mitigating factors, summary dismissal is the most likely penalty, even for a first offence. This means that no notice or payment in lieu of notice will be given.

#### **4 Precautionary Suspension**

- 4.1 Chief Officers considering precautionary suspension should discuss the matter with HR Coaching and Advice team in the first instance.
- 4.2 An individual may be suspended from duty at any time if the circumstances warrant it. These circumstances include the arrest of an individual or the institution of criminal proceedings or enquiries which Royal Greenwich considers unacceptable. Precautionary suspensions should normally be on full pay. Where an employee is absent due to sickness, the suspension still applies and they will not be allowed to return to work until given permission to do so.
- 4.3 Such a suspension may not necessarily lead to disciplinary proceedings and does not pre-judge the outcome of any proceedings which might arise. It is important to stress to the individual that they have not been dismissed and no action should be taken to suggest they have. If investigations do become protracted, regular contact with the individual should be maintained and they should be notified once the investigations have been completed.
- 4.4 Suspension is not a punishment. It is to be regarded as a means of temporarily removing from posts individuals whose continued employment may involve risk, embarrassment or to allow an investigation to proceed without interference. The necessity for the employee to remain suspended will be reviewed at regular intervals and where possible, lengthy periods of suspension will be avoided.
- 4.5 Exceptionally, the line manager may decide to send an individual home if they judge that the circumstances so require. Such action would not constitute formal suspension (which cannot be authorised by line management) and should not involve absence from work of more than a day or two. Where a longer period is required, HR Coaching and Advice should be asked to authorise formal suspension.

## 5 Criminal Proceedings

- 5.1 The following arrangements apply irrespective of whether criminal offences are committed in the course of employment or outside of employment. Criminal offences include child abuse and abuse of young adults or vulnerable adults. In such cases the Children and Safeguarding Manager should be notified immediately.
- 5.2 All irregularities will be notified to the Internal Audit and Fraud section who will, in appropriate cases, notify the Police (Royal Greenwich has a duty to notify the Police if there are reasonable grounds to suspect that a criminal offence has been committed). Chief Officers will need to consult with Legal Services as appropriate. Investigations may need to be carried out in conjunction with relevant agencies where necessary (e.g. Police, Social Services). Royal Greenwich will determine the timing of provision of information to employees.
- 5.3 Where the suspected/reported misconduct is deemed to be a matter that is relevant to the employment, the employee's department/directorate will, at the appropriate time, notify the employee of the issue and will be responsible for any management investigation and hearing under these procedures.

## 6 Outline of Formal Disciplinary Procedures

- 6.1 A flow chart [Outline of Disciplinary Procedure](#) provides a summary for clarity.
- 6.2 If formal disciplinary action is being considered there are particular steps which have to be followed and certain people will be responsible for those steps. The table below outlines these steps. Note, where the employee is on a precautionary suspension, every effort should be made to ensure that the hearing is held as soon as possible and that the employee is notified of any delays.

Step	Responsible person
Manager contacts HR Coaching and Advice about possible disciplinary matter.	Manager. HR Coaching and Advice provide ongoing support
Preliminary enquiries to establish if grounds for investigation (if necessary)	Normally the manager
Manager notifies individual in person and in writing that matter will be formally investigated	Manager
Relevant Chief Officer/manager decides on who should investigate the matter with advice from HR	Investigation Manager
Where evidence indicates case to answer, disciplinary hearing to decide	Relevant Manager to decide whether disciplinary sanction is required. The

and hear employee's response.	<p>minimum authority levels are:</p> <ul style="list-style-type: none"> <li>• SO1 grade for first written warning is being considered</li> <li>• PO5 for Final warnings</li> <li>• PO7 for dismissal or other serious penalty</li> </ul>
Where appeal lodged against a disciplinary decision short of dismissal	<p>Manager with no prior involvement in case to hear. Minimum authority levels are:</p> <ul style="list-style-type: none"> <li>• PO6 grade for first written warning is being considered</li> <li>• PO7 for Final warnings</li> </ul>
Where appeal lodged against dismissal (appeals should be made within 10 days of the date of the decision letter)	<p>Within 20 days of receiving the appeal, the manager issuing the disciplinary sanction must provide a full report of the case.</p> <p>Chief Officer from another Directorate with HR will hear appeal</p>

## 7 Investigation

- 7.1 Once a manager is aware that disciplinary action should be considered, they should contact HR Advice and Coaching team outlining the issues. Before considering any formal action, it may be necessary to carry out some enquiries or preliminary investigation where the facts are not clear or to establish if a full formal investigation is required.
- 7.2 The manager, with advice from HR Coaching and Advice, will determine who should investigate the matter. There may be occasions when investigation by the line manager is not appropriate e.g. where they are a witness in the case. Where allegations are serious cases, it may be necessary to involve HR or Internal Audit and Fraud.
- 7.3 The investigating manager should:
- not sit on the disciplinary hearing panel
  - be at least equal in seniority to the employee concerned
  - be no more senior than the manager who will carry out the disciplinary hearing



- 7.4 During the investigation interview, the employee should be offered an opportunity to be accompanied at the interview while not resulting in any undue delay. The employee should be made aware that the investigation is being carried out in accordance with this procedure and given a copy when presented with the allegations. Investigations should be carried out as quickly as possible with minimum disruption to service provision. HR Officers are not required to be present/assist at Investigation interviews.

### **Interviewing employees and witnesses**

- 7.5 During the investigation the employee will normally be interviewed to respond to the issue(s). At the start of such interview it should be explained to the employee what the suspected or reported misconduct is at that stage. It may not be possible to precisely inform the employee of all of the allegations since it is after the investigation that findings are made.
- 7.6 The investigative process should be documented as it develops, to show the steps taken by the investigating officer, e.g. how the complaint came about, the effort made to obtain access to witnesses, any advice obtained. It may be necessary to rely on such information following the investigation.
- 7.7 As part of the investigation, all those who are thought to have relevant evidence should be asked to provide this, including members of the public. Notes of each interview should be made and retained confidentially.
- 7.8 Where a management or employee witness is unable to attend any later disciplinary hearing (or in the case of a member of the public, where they were unwilling to attend), their evidence would be taken in the presence of an employee representative mutually acceptable to both the employee concerned and the investigating officer. In the case of a witness who was a vulnerable person, other agencies may also be involved to provide support and assistance to such person.
- 7.9 The witness should be asked to sign the notes (unless there were special circumstances that made this impracticable). The investigating officer and the representative should also sign the notes as a true record of the evidence taken. If a hearing is decided and witnesses will not be attending, a copy will be provided to the employee concerned because it may be relied upon as evidence at any later disciplinary hearing.

### **Factors for Consideration by the investigating officer**

- 7.10 In deciding whether to recommend a disciplinary hearing or not, the investigating officer's consideration should include the following factors:
- The manner in which the suspicion/allegation was raised
  - Any explanation offered by the employee concerned when interviewed

- Information gleaned from any documents considered
- Whether there may be an inappropriate motive on the part of a person who reported the matter
- Any advice from HR as to the outcome of any similar cases
- Any known information as to mitigating circumstances that may affect the decision to instigate disciplinary proceedings or affect the stage at which such proceedings may be instigated.
- Any previous relevant warning issued that is unexpired

### **Producing Reports and evidence for disciplinary hearings**

- 7.11 Where the case is complex or detailed, it may be advisable for the investigating officer to prepare a brief report setting out the issues. This will not be intended to influence the outcome of the disciplinary hearing since the evidence presented at the hearing should determine the outcome.
- 7.12 If a disciplinary hearing is held, a copy of the report will normally be shared with the employee and panel. Advice should be sought from HR Coaching and Advice if the report contains sensitive information.

## **8 Disciplinary Hearing**

- 8.1 On completion of the investigation, the findings will be referred to a relevant Chief Officer to consider whether there is a disciplinary case to answer.
- 8.2 The Chief Officer will then write to the employee providing a written statement of allegations against them. This will detail the case and include any documentary evidence. The letter will explain that:
- they are required to attend a disciplinary hearing
  - they have the right to be accompanied only by a trade union representative or work colleague at the hearing
  - They will be given five working days' notice to prepare for the hearing
  - They will also be referred to the disciplinary procedure

- 8.3 The letter will also explain that the trade union representative or work colleague has a right to address the chair but not to answer direct questions on behalf of the employee. They can present and summarise the employee's case and respond on the employee's behalf to any view expressed at the hearing and confer with the employee during the hearing.
- 8.4 If the employee or their representative is unavailable to attend a meeting on the date set, the meeting may be postponed for up to 5 working days at management discretion. Any such request will need to be made in writing as soon as possible and supported by full reasons for the request.
- 8.5 The disciplinary hearing will be chaired by a Chief Officer with a HR advisor present. The hearing will be attended by the employee and their representative (if applicable) and the line manager or manager whose decision led to a hearing being called. During the hearing, both sides can call relevant witnesses for example the investigation manager. It is the responsibility of the employee to arrange attendance of any witnesses they wish to call.
- 8.6 At the hearing:
- All evidence obtained at the investigative stage should be given to the chair
  - The chair will check with HR whether there are any work-related or personal factors which may have an impact on the case
  - The employee is referred to the allegations against them and given an opportunity to respond
  - Relevant witnesses may be called
  - The [model procedure for formal hearings](#) is followed
- 8.7 Where an employee cannot or does not attend a disciplinary hearing within a reasonable amount of time, Royal Greenwich may, according to the circumstances:
- hold a disciplinary hearing in the employee's absence
  - allow a representative to attend the disciplinary hearing on behalf of the employee; or
  - deal with the disciplinary hearing by way of written representations

Royal Greenwich will always seek to make a decision in consultation with the employee directly but where this is not possible, for example employee does not attend, Royal Greenwich reserves the right to make the final decision as to what course of action is appropriate.

- 8.8 The Chief Officer, after considering the facts will decide on appropriate action. This will normally be:
- that the employee is adjudged not to be blameworthy and any written reference should be expunged from their file
  - that the employee is adjudged to be blameworthy and that appropriate disciplinary action will be taken

- 8.9 The employee will be told of the decision, any disciplinary action to be taken and the reasons for the decision. For actions short of dismissal, employee will be informed that any re-occurrence or continuing misconduct will lead to further formal action being taken.
- 8.10 The decision will be confirmed in writing and be sent to the employee under the signature of the person who heard the case within five working days of the hearing and will include a right of appeal against the decision.

## **9 Penalties**

- 9.1 The disciplinary procedure may be implemented at any stage where an employee's conduct warrants it. There is no fixed scale relating particular penalties to particular offences: each case is decided individually in the light of the circumstances. Except for gross misconduct, no one will be dismissed for a first offence or without notice or pay in lieu of notice. Past offences, disciplinary warnings and penalties will be considered when deciding upon a suitable disciplinary penalty, but no account will be taken, after a lapsed offence and the subsequent disciplinary action, except for very serious offences where specific warning will have been given.

### **Written Warnings**

- 9.2 If an employee has failed to achieve or sustain the required conduct following informal action, or conduct is considered too serious to be dealt with by way of an informal action, a written warning may be given stating the unacceptable conduct and, if appropriate, what improvement is required, how this will be measured and any required timescale for sustained improvement.
- 9.3 The written warning will state that any further misconduct may need to be considered under the next stage of the formal disciplinary procedures (final written warning) and may lead to further disciplinary action.
- 9.4 The written warning will be disregarded after 1 year of satisfactory conduct.

### **Final Written Warnings**

- 9.5 If an employee has failed to achieve or sustain the required conduct following a written warning, or conduct is considered too serious to be dealt with by way of a written warning, a final written warning may be given stating the conduct complained of and, if appropriate, what improvement is required, how this will be measured and any required timescale for sustained improvement.

- 9.6 The final written warning will state that any further misconduct may need to be considered under the next stage of the formal disciplinary procedures and may lead to dismissal.
- 9.7 The final written warning will usually be disregarded after 3 years of satisfactory conduct. In exceptional circumstances, in respect of particularly severe offences, final warnings may be retained indefinitely.

### **Dismissal or Alternative Sanctions**

- 9.8 If an employee has failed to achieve or sustain the required conduct following a final written warning or in cases of gross misconduct the employee may be dismissed. Where there is compelling mitigation, Royal Greenwich may consider imposing an alternative sanction to dismissal from the list below:
- a written warning
  - a final written warning
  - financial repayment made by deductions from pay
  - demotion or transfer. Any demotion/transfer to a lower graded job should be by way of dismissal from the existing job and offer of re-engagement to a lower graded job, with the employee's written agreement. The employee should be provided with full details of that job, together with the terms and conditions of employment that would apply, before being asked to decide whether or not they will accept it. If the employee's written agreement is not forthcoming, they will be (summarily) dismissed for Gross Misconduct
- 9.9 In cases of gross misconduct, dismissal will be summarily without notice.

### **Recording Disciplinary Offences**

- 9.10 The full circumstances of any disciplinary offence will be recorded including the action taken, whether an appeal was lodged, its outcome and any subsequent disciplinary penalty. This will remain on file and will remain confidential for the duration of the penalty and then will be removed on expiry of the sanction.
- 9.11 The notes taken at the hearing must be shared with all parties present, including the employee and their representative within 2 weeks of the date of the hearing.
- 9.12 Copies of the notes are for information only and no invitation to comment should be made. If the employee and their representative do wish to comment on the notes they should make their comments in writing which should then be retained and noted for the records.

## **10 Obligations to external Bodies**

- 10.1 On conclusion of a case, if an employee has been dismissed for conduct that has harmed ( or is likely to harm) a vulnerable adult or if the individual poses a risk of harm to a vulnerable adult, in such circumstances the Borough has a legal duty to inform the Disclosure and Baring Service, (DBS)
- 10.2 The Departmental manager should discuss the case with Human Resources as to whether the Manager will decide to make a referral to the DBS for consideration of inclusion on the barred lists.
- 10.3 As soon as a decision has been made following a dismissal for gross misconduct relating to a safeguarding issue involving vulnerable adults details of the allegation(s), the investigation and the decision of the disciplinary panel should be passed to the Disclosure & Barring Service (DBS) for consideration of barring the individual from future employment with Vulnerable adults.
- 10.4 If an employee decides to resign before a disciplinary investigation or hearing has been concluded, the disciplinary process should continue through to a conclusion; even if this means it is completed after the employee has actually left the Royal Borough. Should a disciplinary hearing decide that had the employee remained in employment he/she would have been dismissed then details of the allegations, the investigation and the decision of the disciplinary panel should be passed to the DBS for consideration of barring the individual from future employment with vulnerable adult..

## **11 Right of Appeal**

- 11.1 An employee receiving a disciplinary penalty under the formal disciplinary procedure may appeal in writing setting out the grounds for the appeal. The employee has the right to be accompanied by a trade union representative or a work colleague.
- 11.2 The minimum levels of management with authority to hear appeals are:

Written warnings	Managers of at least PO6 grade
Final warnings or other serious penalty (excluding dismissal)	Managers of at least P07 grade
Dismissal	Chief Officer

All appeals should, where possible, involve a Manager or Chief Officer from a different Directorate from the employee and have had no previous involvement in the case. The Appeal Officer must be senior to the employee and must be at least equal in seniority to the person who made the earlier formal decision. In order to maintain impartiality, those who have been party to the earlier formal decision or provided advice at the earlier formal stage may not also make the appeal decision or advise at the appeal stage.

- 11.3 HR should be present during the appeal hearings and deliberations to provide advice to the appeal officer

#### Registering an appeal

- 11.4 The appeal must be submitted in writing to HR within ten days of the date of the letter confirming the formal decision at the earlier stage.
- 11.5 The appeal must provide sufficient information so that the manager can respond. For example:
- The findings are not disputed but the action was too harsh
  - The findings are disputed (with details)
  - The investigation was incomplete (with details)
  - There was not a fair hearing (with details)
  - New evidence has materialised since the formal decision at the earlier stage was issued (with details)
  - Mitigation was not adequately considered

### **The Appeal Hearing**

- 11.6 At the appeal hearing, new evidence cannot be submitted in the form of documents or witnesses unless either party did not have, nor could reasonably be expected to have, such evidence at the earlier stage. The Appeal Officer or Chief Officer (as appropriate) should have regard to this and to the advice of HR in deciding whether or not to accept new evidence.
- 11.7 Royal Greenwich shall provide the employee with reasonable access to relevant information necessary to present their appeal, with facilities to make copies where required. Access will not normally be granted where information is of a confidential or personal nature (e.g. medical records, details on application forms, personal files) and requests may need to be made to the Corporate Information Security Compliance Manager for approval.
- 11.8 It is not intended that the hearing will constitute a re-hearing of the case. The earlier proceedings should be considered to the extent necessary for a review of the earlier formal decision.

#### **Timescales and provision of information**

11.9 Within five working days of receiving an appeal, HR should give a copy to the manager who made the formal decision at the earlier stage and request a written response to the grounds of appeal. The manager then has 20 days to provide a response to HR. The written details or the report should be sufficient to explain the substance of the case, the names of any witnesses, the response to the grounds of appeal, and include any documents that are relevant to the appeal.

11.10 The parties should seek to ensure that the appeal hearing takes place within 30 working days of receipt of the management response or report.

11.11 The employee should be provided with at least five working days' notice in writing of the date of the hearing. The letter should include:

- the date, time and place of the hearing
- rights as regards being accompanied/represented.
- right to call witnesses where necessary
- that the appeal is the final stage

All parties should be reasonable as to timescales.

11.12 The [Model procedure for Formal Hearings](#) should be referred to for dealing with appeals.

11.13 The Appeal Officer may decide:

- (i) That the appeal is not upheld, and the decision of the Manager is confirmed
- (ii) That the appeal is upheld, and the penalty issued at the earlier stage is commuted to a less severe penalty
- (iii) That the appeal is upheld, and no penalty is warranted and all records be expunged from the employee's file.

11.14 In straightforward cases parties may be recalled shortly after the hearing and be notified of the Appeal Officer's decision. For more complex cases the final decision may be notified in writing.

11.15 The decision of the Appeal Officer shall be confirmed in writing to both parties. The employee shall be advised that there is no further right of appeal within Royal Greenwich.

## **12 Further Information**

12.1 For further information on the operation of this procedure, please contact HR.



