

Disciplinary Procedures

We will provide this policy on request at no cost, in large print, in Braille, on tape or in another non-written format.

INVESTIGATION, DISCIPLINARY AND APPEAL PROCEDURES

1.0 Investigation Procedure

- 1.1 When an allegation of misconduct that cannot be dealt with informally occurs, the relevant line manager will either carry out or arrange for an investigation to be carried out. Guidance on the appropriate person to carry out this investigation can be given by a member of line management/HR Team.
At this stage no decision will be taken as to the seriousness of the incident. The same investigation procedure applies in all cases.
- 1.2 The purpose of investigations is to gather all relevant facts within a reasonable timescale. The Investigating Officer may request statements from the individual(s) themselves and any others who may be able to provide additional and relevant information to the investigation. If the decision is taken to request written statements, individuals must be made aware that these statements may be shared with others involved in the investigation.
- 1.3 Unless there are exceptional circumstances, investigations should be completed within a maximum period of 3 weeks. Where any investigation is completed over a longer time frame, there must be reasonable justification. In all cases, investigations should be completed as soon as possible and every effort should be made to achieve this. HR will provide advice on progressing investigations where participants are absent due to sickness.
- 1.3 The Investigating Officer will at all stages of the procedure keep the HR Team fully informed of the progress of the investigation and they must also seek advice from the HR Team at appropriate times.
- 1.4 Following discussion with the HR Team, the Investigating Officer should send a copy of the standard assessment of incident form.

2.0 Suspension

- 2.1 In some circumstances, it may be necessary to consider suspending an employee during the investigation stage.
- 2.2 Suspension of an employee will only be done following consideration by an Area Care Manager, ARBD Care Manager, Service Development Lead or Section Head. A Health and Wellbeing Manager, Health and Wellbeing Team Leader or Staff Nurse may suspend a member of staff with the authorisation of an Area Care Manager, ARBD Care Manager or a Service Development Lead. The suspension should be confirmed in writing to the employee within 2 days.

The decision to suspend should also be communicated to all relevant managers of the service concerned as well as relevant on call managers.

Suspension is not a form of disciplinary action and it should not be used unless the following circumstances apply:

- where a person could have influence or interfere with the investigation if they remained at work.

- where a manager feels that the person is not fit for duty and they may be a danger to themselves, colleagues, tenants or people we work for.
- where the allegation is of such a serious nature that by the person remaining at work during the investigation it may risk the reputation of the organisation.

Alternatives to suspension, such as temporary relocation, where appropriate, should be considered prior to suspension.

The employee should be advised of the following:

- reasons for suspension.
- that he/she will remain on full pay.
- that he/she is likely to remain on suspension until the conclusion of the investigation or if it proceeds to disciplinary until the decision of the Disciplinary Officer.
- that he/she must not attend Wheatley Care premises unless requested to do so.
- that he/she must ensure availability to meet with officers to ensure the speedy conclusion of the investigation.

The suspending officer must ensure that the employee is aware of the supports available to him/her and how to access them.

NB Suspension will not normally exceed a period of 7 calendar days without a review.

- 2.4 The Investigating Officer will hold an investigation meeting to establish the facts of the allegation and invite the individual and others to the investigation meeting, advising him/her of the right to representation.

To allow speedy resolution, the Investigating Officer may request that staff attend the investigatory meeting and bring their statement with them.

Reasonable notice of invite to an investigation meeting to participants is normally 48 hours.

- 2.5 Following any investigation meeting, each individual must be sent the typed minute of the meeting, and be given the opportunity to make any comment on its content. If there is disagreement as to the content, then the employee's comments may be attached to the minutes in the file for consideration by the Senior Officer.

- 2.6 The Investigating Officer will compile an Investigation Summary Report, which will be forwarded to a Senior Officer appointed by HR, who will make a decision, based on the content of the report, as to whether there are grounds to proceed to a disciplinary hearing. If the decision is to proceed to a disciplinary hearing the Senior Officer will then take on the role of Disciplinary Officer. The outcome at this stage may be one of the following:

- No further action is required. This should be confirmed in writing by the Senior Officer.
- A training and development requirement is identified for an individual or a group and this will be followed through by the line manager. This should be confirmed in writing by the Senior Officer.

- There are sufficient reasons to proceed to a Disciplinary Hearing. Staff will receive an invite to disciplinary letter from the Disciplinary Officer. **(NB See point 4.2 below prior to writing to employee)**
 - That the incident/allegation is of a more serious nature and the disciplinary procedure for more serious incidents should be followed. Staff will receive an invite to disciplinary letter from the Disciplinary Officer.
- 2.7 Letter templates are available, although every situation is different, and HR staff are available to give advice on wording prior to sending to employees, as requested.

3.0 Conducting an Investigation

The purpose of carrying out an investigation is to gather all relevant facts within a reasonable timescale. The investigating officer will normally follow the steps below. In some circumstances, an Investigating officer may request staff provide a written statement before attending an investigatory meeting or bring their written statement to the meeting. If the investigation is more straightforward and the Investigating Officer knows what questions he/she wishes to ask in an investigatory meeting, then requesting a written statement is not required.

- 3.1 Request written statements from witnesses or staff who may be able to provide relevant information, giving a specific date for submission of statements. All statements must be signed and dated if handwritten or the date and sender should be recorded if emailed. Individuals must be advised that their statement may be used as evidence should the investigation proceed to a disciplinary hearing. In exceptional circumstances they may be asked to attend a disciplinary hearing as a witness. They must be advised that their statement will be given to the person being investigated or their representative. Individuals providing a statement will be allowed the opportunity to discuss their statement with a representative, prior to it being submitted. This will not however be allowed to delay the investigatory process.
- 3.2 Following initial fact finding, which may include receipt of statements, the Investigating Officer may decide to interview the employee against whom the allegations have been made and any other staff who may be able to provide further relevant information.
- 3.3 The employee should receive a letter requesting their attendance at the meeting and explaining the purpose. Please see appendices 4a, 4b and 4c.
- 3.4 The Investigating Officer will consider the following points when arranging a meeting:
- venue (should be private and should have an additional room for the member of staff to meet with their representative if need be)
 - should ensure they will not be disturbed
 - arrange a trained note taker to be present at the meeting
 - travel arrangements for all parties concerned
 - notice provided to employee
 - the capability of the employee to attend and comprehend the nature of the meeting
- Investigation meetings may take place at the service where the alleged incident has taken place if appropriate for convenience.
- 3.5 Staff attending an investigation meeting should have the opportunity to be accompanied, if they wish.

- 3.6 Prior to the investigation meeting, the Investigating Officer should have a prepared list of questions for the employee based on their statement (if applicable) and any other relevant (e.g. witness) statements or information. Questions should be open, clear, non-judgemental and not leading in manner. Supplementary questions are likely to be required however, depending on the responses received.
- 3.7 The Investigating Officer should remember that the purpose is to gather relevant facts.
- 3.8 When meeting with the employee whose conduct is under investigation, the Investigating Officer must ensure that the employee understands the nature of the allegations made against them.
- 3.9 The employee will be given the opportunity to give a full and detailed explanation of the circumstances surrounding the allegation and any additional information they feel relevant.
- 3.10 A summary of the facts stated should be made with the employee at the end of the meeting.
- 3.11 The employee should be advised that they will receive a minute of the meeting for comment and they should be advised of the expected timescale for the completion of the investigation.
- 3.12 If an employee has comments or disagrees with the content of the minute of the investigation, then this should be appended to the note of the minute and included in the documents to be considered by the Senior Officer.
- 3.13 The employee should be reminded of the supports available to them and how to access them.

4.0 Disciplinary Procedure

Incidents of a Less Serious Nature (Potential Misconduct)

- 4.1 The HR Team will appoint a Senior Officer who will make a decision based on the content of the investigation Summary Report. If the decision is to proceed to a disciplinary hearing the Senior Officer will then take on the role of Disciplinary Officer
- 4.2 Prior to writing to the employee, the Disciplinary Officer must contact HR to ascertain if there is a live warning on file. If there is a live final written warning, then it is vital to inform the employee, both in the invitation letter and at the start of the hearing, that dismissal is a potential outcome, even though the incident in question is of a less serious nature.
- 4.3 The Disciplinary Officer will chair the hearing. HR will also to be in attendance. The Chair of the panel is responsible for making all necessary arrangements, date, venue, accommodation, note-taker etc.
- 4.4 The Disciplinary Officer will write to the employee advising them that they are required to attend a disciplinary hearing. Please see appendices 8a, 8b and 8c. The letter must contain the following information:
 - the date, time and venue for the hearing
 - who will be present

- the allegations to be considered at the hearing
 - potential outcomes
 - the right to be accompanied
 - contact name and telephone number to confirm attendance
- 4.5 The Disciplinary Officer must also send a copy of the Investigation Summary Report to the employee along with any other information and appendices that are relevant to the case and may be used as part of the decision making process. Care should be taken with regards to data protection issues. This must be sent to give sufficient time (at least 48 hours) for the employee to read the information and consider their response.
- 4.6 The employee must be sent all relevant information that the Disciplinary Officer has considered prior to the Hearing. No new facts may be presented by the Disciplinary Officer during the disciplinary hearing. If the employee presents substantial new information on the day, that was not included in the investigation, the hearing may be adjourned to consider whether it can continue or be reconvened at a later date to allow time for consideration of this new information.
- 4.7 If an employee is unable to attend, a further date should be provided. This should be within 7 calendar days of the date of the original hearing where possible.
- 4.8 The hearing should be conducted appropriately. Please refer to the hearing template attached as Appendix 9.
- 4.9 The purpose of the hearing is to provide the employee with an explanation of the complaint against them and allow them the opportunity to respond.
- 4.10 Following the hearing, wherever possible a decision should be made on the same day. If this is the case, the employee should be asked to wait until the hearing is reconvened and the outcome is given. The employee and his/her representative must be provided with a private room while the Disciplinary Officer is making his/her deliberations. Please note that time must always be taken to consider the full information provided prior to reaching the decision. If it is felt that a decision will not be able to be made quickly, the employee must be informed that they will be advised verbally and in writing as soon as possible. The following must be considered when reaching a decision:
- the information provided by the employee and any mitigating factors
 - the employee's employment record and current disciplinary record
 - action taken in any previous circumstances
 - what you believe is reasonable given the information in front of you

Information on current disciplinary records may be obtained from Human Resources and should be requested prior to deciding on an appropriate sanction.

For incidents of a less serious nature, the outcome may be:

- no action required
- training and development issues
- first written warning
- final written warning (where there has been recurring unsatisfactory conduct)

A final written warning should not be issued for an incident of a less serious nature for a first occurrence.

- 4.11 If the employee has not been informed of the decision on the day of hearing, call back the employee and advise them of your decision and the reasons for it. If appropriate, advise them of the sanction given and the date of expiry. If the outcome is a disciplinary sanction, advise them that any further misconduct may result in further disciplinary action. If appropriate advise of any further action required, such as training. Advise of the right of appeal. Please refer to the letters attached as Appendix 7.
- 4.12 Ensure the letter advising of the decision is sent as soon as possible after the date of the hearing. A letter should be sent regardless of whether you have advised the employee in person or not. Copies of the letter should be placed in the disciplinary file. If a sanction is given, a copy of the letter must also be placed in the personal file with HR. An employee should not normally find out the outcome of a disciplinary hearing from the letter, which is simply a written confirmation of the decision that has already been communicated verbally.
- 4.13 Ensure the minutes are prepared and a copy sent to the employee within 5 working days of the hearing.
- 4.14 Advise the individual's line manager of the outcome of the hearing and any action which is required in terms of training etc.
- 4.15 Ensure the file is collated appropriately and has all relevant documents and correspondence.
- 4.16 Return the file to the HR Section for secure storage.

5.0 Incidents of a More Serious Nature (Potential Gross Misconduct)

- 5.1 The HR Team will appoint a Senior Officer who will make a decision based on the content of the investigation report. If the decision is to proceed to a disciplinary hearing the Senior Officer will then take on the role of Disciplinary Officer. Reference should be made to Section 12.0 of the Policy.
- 5.2 The Disciplinary Officer will be responsible for making all necessary arrangements, such as the date, venue, additional accommodation and note-taker.
- 5.3 The Disciplinary Officer will write to the employee advising that they are being called to a disciplinary hearing, that it is considered to be of a serious nature and outlining precisely the reasons for the hearing. The employee must also be advised of who will be present at the meeting and their right to be accompanied. Please refer to Appendix 8b. The employee should be advised that dismissal is a potential outcome both in the invite letter and at the start of the hearing
- 5.4 The Disciplinary Officer must also send a copy of the Investigation Summary Report to the employee along with any other information and appendices that are relevant to the case and may be used as part of the decision making process. Care should be taken with regards to data protection issues. This must be sent to give sufficient time (at least 48 hours) for the employee to read the information and consider their response.
- 5.5 The employee must be sent all relevant information that the Disciplinary Officer has considered prior to the Hearing. No new facts may be presented by the Disciplinary

Officer during the disciplinary hearing. If the employee presents substantial new information on the day, that was not included in the investigation, the hearing should be adjourned to consider whether it can continue or be reconvened at a later date to allow time for consideration of the new information.

- 5.6 The Disciplinary Officer should ensure that the Investigating Officer will be available at the hearing to present the investigatory report.
- 5.7 The hearing should be conducted in line with the hearing template (Appendix 9)
- 5.8 Following the hearing, wherever possible a decision should be made on the same day. If this is the case, the employee should be asked to wait until the hearing is reconvened and the outcome is given. The employee and his/her representative must be provided with a private room while the Disciplinary Officer is making his/her deliberations. Please note that time must always be taken to consider the full information provided prior to reaching the decision. If it is felt that a decision will not be able to be made quickly, the employee must be informed that they will be advised verbally and in writing as soon as possible. The following must be considered when reaching a decision:
 - the information provided by the employee and any mitigating factors
 - the employee's employment record and current disciplinary record
 - action taken in any previous circumstances
 - what you believe is reasonable given the information in front of you

Information on current disciplinary records may be obtained from Human Resources and should be requested prior to deciding on an appropriate sanction. no further action:

- training and development needs
- final written warning
- dismissal with notice
- summary dismissal (no notice provided, this can only be used in cases of gross misconduct)

You may also wish to consider additional action such as transfer of the employee. This would be done for specific reasons which would be fully explained to the individual.

Please note that information regarding an employee's current disciplinary record may be obtained from Human Resources and this should be requested prior to deciding on the appropriate sanction.

- 5.9 A letter must be sent to the employee as soon as possible after the hearing. The employee should also be provided with a copy of the minutes. Please refer to the letter templates in Appendix 10. These templates are only a guide and if in any doubt, please consult with HR prior to issuing the letter. A copy of the letter should be placed in the disciplinary file and if a sanction is issued a copy should also be placed in the personal file in HR.
- 5.10 The Disciplinary Officer must advise the employee's line manager of the outcome of the hearing and any action they may need to take. On call should also be advised where the employee was previously suspended that they are now available for work.
- 5.11 The Disciplinary Officer must ensure the file is in appropriate order and pass it to HR for appropriate storage.

6.0 Conducting a Disciplinary Hearing

6.1 Venue

Disciplinary Hearings should be held away from the employee's normal place of work, in a private setting.

Sufficient accommodation should be available for the following:

- a room for the hearing to take place
- a room for the employee and their representative and witnesses
- a room for the investigating officer and witnesses (where necessary)

The rooms must be available before, during and after the hearing taking place.

The Disciplinary Officer must coordinate with HR to ensure a member of the HR team is present in every Disciplinary Hearing.

The Disciplinary Officer should also arrange for a trained note taker to be present and give the note taker the opportunity to review relevant documents prior to the Hearing.

6.2 Correspondence

The letter inviting the employee to the hearing must contain the following:

- the date, time and venue for the hearing
- the specific allegations made against them
- who will be present at the hearing
- if the investigating officer will be there to present a report
- the right to be accompanied
- the possible outcome of the hearing (NB this must mention the possibility of dismissal if the allegations being discussed are of a more serious nature, or if the employee has a live final written warning.)

In addition to the letter, the employee must be provided with a copy of the investigatory report, any statements and any other information that has been made available and has been considered by the Disciplinary Officer in connection with the disciplinary hearing. This must be provided prior to the hearing to allow ample time for the employee to read the information and discuss the content with their representative.

6.3 Representation

Employees have a right to be accompanied at a Disciplinary Hearing. The organisation will allow an employee to be represented by a certified trade union representative or any person currently employed by one of the Wheatley Group companies.

Employees who are asked to accompany a colleague to a Disciplinary Hearing are not obliged to do so. If they agree however, they are entitled to time off. Please refer to the Time Off Policy.

Employees should be asked to confirm the name of their companion prior to the hearing.

A companion may address the hearing and ask questions during the hearing. The representative will not however be allowed to answer questions on behalf of the employee.

6.4 Attendance

If the employee makes a reasonable request for an alternative date for the hearing, then a second date should be offered. This should normally be within 5 working days of the original date. It should be made clear to the employee that failure to attend the second date arranged will result in a decision being made in the employee's absence.

6.5 Procedure (less serious incidents i.e. potential misconduct)

- The Disciplinary Officer will introduce everyone present and confirm in what capacity they are present.
- A note-taker will be present to take minutes
- The Disciplinary Officer will explain the purpose of the hearing: that it is a Disciplinary hearing and it is possible that the outcome may be that disciplinary action is taken.
- The Disciplinary Officer will confirm how the hearing will proceed; all items must be addressed through him/her.
- The Disciplinary Officer will read the investigatory report and summarise the points raised.
- The Disciplinary Officer will ask the employee to respond to the allegations.
- The Disciplinary Officer will ask any questions they feel relevant and that will assist him/her in reaching a decision.
- The Disciplinary Officer will ask the employee if he/she wishes to ask any questions, or if there is anything else the employee wishes the Disciplinary Officer to take into account (Which could include mitigating factors)
- The Disciplinary Officer will sum up and then adjourn the meeting to consider the information presented.
- Wherever possible the employee and his/her representative will be asked to wait until the Disciplinary Officer has reached his/her decision. If this is not possible advise that the decision will be communicated verbally, in person or by phone call, within 7 calendar days. Either way, the decision will also be confirmed in writing.
- The Disciplinary Officer must take time to carefully consider all information prior to reaching a decision.
- The Disciplinary Officer should call the employee in and advise them of their decision and the reasons for it. If a disciplinary sanction has been issued, the process of appeal must also be advised (Both verbally and in writing).

6.6 Procedure (Incidents of a more serious nature i.e. potential gross misconduct)

- In hearings which relate to more serious incidents the Investigating Officer will present the investigatory report and will be invited to do so by the Disciplinary Officer. Please note that the Investigating Officer should be invited into the Hearing at the appropriate time to present his/her report and should not be present before the employee attends the hearing.

- The employee will then be asked to respond to the Investigating Officer's report.
- The Disciplinary Officer may ask questions of either the Investigating Officer or the employee
- The Investigating Officer should leave the hearing once there are no further questions from any party in relation to the investigatory report.
- The Disciplinary Officer will ask questions of the employee.
- The Disciplinary Officer will then ask the employee to sum up or add anything further.

7.0 Conducting an Appeal

On receipt of an appeal letter, a date will normally be arranged within 2 weeks (please refer to section 11.0 of the policy). A letter will be sent to the employee advising them of their right to be accompanied. Employees will be requested to provide grounds for appeal, however if this is not submitted, the appeal hearing must go ahead.

The employee will be asked to submit any information they feel relevant prior to the appeal hearing. If the grounds for appeal are based on new evidence which was not available at the disciplinary hearing, then this must be presented prior to the date of the meeting.

If the date for the appeal is not suitable, then a second date may be provided, which would not normally be more than 5 working days after the original date. If the employee fails to attend the second date, no further date will be provided.

The appeal will be heard by the Head of Service, Area Care Manager or other more senior post. In the case of an appeal against dismissal, the Director of Wheatley Care or a member of the Co-ordinating Management Group must Chair the appeal hearing.

A member of the HR team must be present.

A note-taker will be present to take notes.

The Disciplinary Officer will be present at the appeal hearing.

The Appeal chair will introduce everyone present and confirm their role and the purpose of the meeting. All questions or statements should be addressed through the Appeal chair.

The Appeal chair will ask the Disciplinary Officer to present a report on the sanction given and the reasons.

The Appeal chair will ask the employee to present their case for appeal.

The Appeal chair will ask any questions of the employee and the Disciplinary Officer.

The Appeal Chair will ask the employee to sum up.

The Appeal Chair will close the meeting and advise that a decision will be given in writing within 5 working days.

The outcome of an appeal hearing may be one of the following:

- the original sanction is overturned and no disciplinary action will be recorded
- the original sanction is reduced, for e.g., from final written warning to first written warning
- the original sanction is confirmed

A letter confirming the outcome and reasons for it will be sent by the Appeal Chair.

The letter will advise that this appeal is the final stage of the internal appeals process