

# DERBYSHIRE CONSTABULARY

## GUIDANCE ON THE DISCIPLINARY PROCEDURE FOR POLICE STAFF

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## **SECTION ONE – Introduction**

This document has been prepared following consultation with UNISON, Legal Services Department and PSD. Its purpose is to provide advice, guidance and support to managers and staff involved in disciplinary procedures. The Notes of Guidance should be read in conjunction with the Disciplinary Procedure for Police Staff and the Professional Standards of Behaviour.

## **SECTION TWO – The Law Relating to Disciplinary Procedures**

### **Potentially Fair Reasons for Dismissal**

In the event of a claim for unfair dismissal, the employer must demonstrate that the reason is one of the five set out below:-

#### **(a) Dismissal for Lack of Capability or Qualifications**

Capability – workers who are unable to meet reasonable standards of performance in the role or unable to continue working because of health problems (consideration must be given to reasonable adjustments under the Disability Discrimination Act 1995).

Qualifications – dismissal usually arises when an employee fails to achieve the required qualifications required in their contract. However, tribunals would expect employers to demonstrate they had given support and training before dismissal. The Management of Change policy may also apply should the member of staff require redeployment.

#### **(b) Dismissal for Conduct**

This occurs where an employee commits an act of misconduct. The Police Staff Code of Conduct and discipline procedure sets out examples of the types of behaviour that is regarded as misconduct.

Gross misconduct is so serious that it justifies instant (known as summary) dismissal and terminates the employment contract without the required minimum period of notice. The misconduct is serious enough to destroy the working relationship and trust between the employer and employee.

However, even where an employee's actions constitute gross misconduct, the employer must consider if dismissal is appropriate to the circumstances. Each case must be considered independently and advice from HR/PSD sought.

#### **(c) Dismissal Due to Redundancy**

Redundancy has a technical legal definition and can occur where there are diminished work requirements or the employee's job is no longer required in the business of the organisation.

#### **(d) Statutory Restriction on Employment**

This arises where it becomes illegal to employ somebody – ie a driver losing a licence.

#### **(e) Some other Substantial Reason**

This covers situations outside the main four categories. This could occur for example when an employee's activities outside work make them unsuitable for continued employment – ie a criminal conviction.

### Determining Fairness of a Dismissal

Where an Employment Tribunal is considering a claim of unfair dismissal, the test of fairness applied is whether or not the employer acted reasonably in the circumstances. It must be shown that:-

- (i) the employer had a genuine belief that the employee was guilty of misconduct
- (ii) that the employer had reasonable grounds for that belief
- (iii) that the employer formed the belief after a reasonable investigation.

It is also essential that employers follow fair procedures when dismissing employees. Failure to follow a procedure may result in a finding of unfair dismissal, even where an employer has demonstrated good reason for dismissing.

### **SECTION THREE – When Should Disciplinary Action be Considered?**

#### Breach of the Professional Standards /Conduct

Disciplinary action often occurs when there are concerns about an employee's conduct, ie unauthorised absence, failure to carry out an instruction etc. or where there has been a breach of the Police Staff Council Standards of Behaviour.

It may be possible that certain forms of conduct are the result of a disability as defined by the Disability Discrimination Act. In such cases it would be appropriate to obtain advice from the Occupational Health Unit and/or implement reasonable adjustments/supportive measures before any decision is made under the Disciplinary procedure.

#### Capability

Issues of capability arise where an employee does not possess the skills necessary to do the job. This may occur where the skills of the job have changed but the employee has not acquired the skills, or where the existing skills become unusable. Training to acquire new skills should be considered or if failing health results in loss of skills a medical review of the employee's health should be undertaken. As under Conduct, the provisions of the Disability Discrimination Act may need to be considered.

#### Performance

Refer to Unsatisfactory Performance Procedures for Police Staff

#### Informal Action - Links to the PDR Process

In many cases informal discussion is all that is required and may be more satisfactory than implementing formal procedures. This should be a two way discussion aimed at highlighting problems in conduct or performance and encouraging improvement. The emphasis is on developing an action plan to assist the employee to improve and maintain standards of work. This should be undertaken through the PDR process.

Where an improvement is required it is essential that the employee understands the standards set for the role, that these are attainable, agrees the action plan, is aware that reviews will be undertaken and over what period. It should be made clear that if there is no improvement the next stage will be disciplinary action.

Care should be taken to ensure that the meeting does not become a formal disciplinary hearing as this may deny the employee certain rights (the right to be accompanied). If the matter becomes more serious during the interview, the discussion should be adjourned. It should be made clear that the matter will then be pursued under the Disciplinary procedure.

The meeting should be documented, noted by the employee and retained within the PDR process.

### Trade Union Officials

No formal disciplinary action will be taken against a Trade Union Official recognised by the Constabulary until the circumstances of the case have been discussed with the Head of HR and a Senior or Full Time Official. For this purpose a Trade Union Official will be regarded as any employee holding any office within the Union.

It is important to demonstrate that the reason for the disciplinary action is for a breach of the Disciplinary procedure. The disciplinary action must relate to conduct as an employee not as a trade union representative.

Problems with the conduct of an individual as a union representative should be dealt with through discussion with Trade Union Officials.

## **SECTION FOUR – Disciplinary Measures and Procedures**

### 1. Informal Warning

The Informal Warning is an important stage in the disciplinary process as this is where the best chances exist to assist the employee to perform correctly. It should be used for dealing with matters of minor misconduct such as inattention to work, timekeeping etc and indicates to the employee that the limits of acceptable behaviour have been reached.

The employee should be interviewed in private to establish any underlying reason for the problem, ie domestic matters, uncertainty of procedures and establish if any assistance can be given – change of hours on a short term basis, further training.

If no underlying problems can be established, the employee should be reminded that the incident has been noticed, informed of the standards required and that a repetition may bring the discipline procedure into use.

They are issued by the line manager who should keep a record of the informal warning. The employee should also be given a copy. This should be reviewed by the Line Manager after six months and if no further issues have arisen, the record should be expunged.

### Guidelines to the Informal Warning

- (a) attention should be drawn to the problem in an informal but constructive manner
- (b) the employee should be given an opportunity to provide any reason for the problem
- (c) suitable supervision, training and support should be given as appropriate
- (d) goals and objectives should be given as required and a realistic timetable for improvement agreed
- (e) performance and/or behaviour should be monitored and a formal review carried out in agreed timescales.

At this and at all formal stages of the Discipline procedure, the employee has the right to be accompanied by a Trade Union representative or work colleague not acting in a legal capacity.

## 2. Formal Action

If formal action is being considered it is essential to conduct a fair and thorough investigation. Inadequate investigation may lead to an eventual dismissal being ruled as unfair by an Employment Tribunal.

### Investigation Stage

The employee should be advised at the earliest opportunity that either a complaint or allegations have been made. The employee should be kept up to date with the course of the investigation.

The aim of the investigation should be to establish the facts without delay. Confidentiality must be maintained at all times and investigations carried out discretely and sensitively. An investigation must be carried out prior to the consideration of a formal warning and it is essential that information is gathered quickly.

The investigation should also look at any mitigating factors relating to the employee, not just what the employee is accused of doing or failing to do.

An investigating officer should be appointed. The officer may be a support staff member or police officer. The investigating officer should not be involved in the original allegation or be a member of any impending disciplinary panel. He/she should be a neutral member of staff and where possible from a different formation from the employee subject to disciplinary proceedings. The investigating officer should be familiar with the Disciplinary procedure (see Guidance Notes for Investigating Officers – Appendix 1).

### Investigatory Interview

The interview should be carried out in private. The employee and any other witnesses should be interviewed as appropriate. This may include both members of staff and the public.

The employee should always be given the right to have a work colleague or Union representative with them. It should be made clear that the interview will form part of the investigation and not be a disciplinary interview. A complete and accurate record of all the interviews should be made and in cases of final warning/gross misconduct, taped. The employee should be provided with Notes on the Disciplinary Investigation.

Depending upon the nature of the investigation, the interviews may be tape recorded to ensure that all relevant facts and statements are accurate. A copy of the tape should be provided to the member of staff.

Where possible, a signed statement should be obtained from each individual.

Allegations may be made by an individual who wishes to remain anonymous. A principle of natural justice is that employees accused of misconduct should have the opportunity to defend themselves and challenge the evidence against them. Any evidence which is to remain anonymous to the accused should be treated with less weight than evidence the employee can challenge.

The disciplinary panel who rely upon the evidence to dismiss should know who the anonymous witness is.

(See notes for Investigating Officers – Appendix 1).

#### Investigation Report

This should outline the allegations made, the investigations carried out and the facts established. It should not make recommendations or observations. Depending upon the nature of the misconduct the report should be submitted to the Head of PSD or Employee Relations Manager, who will, in conjunction with the appropriate manager, decide whether there is sufficient evidence to hold a disciplinary hearing.

If no disciplinary action is to be taken, it is important that all persons who knew of the accusation, or who were interviewed during the investigation are aware of the outcome. This will be undertaken, in confidence by the appropriate line manager or HR Manager.

#### (ii) The Disciplinary Hearing

##### Designated Officer – Authority Levels for Disciplinary Action

The Authority levels are contained within the Disciplinary procedure. Each formation should maintain a schedule of delegated authority and should lodge a formal copy with PSD. Any alterations should be notified accordingly.

##### Preparation for the Disciplinary Hearing

Preparation for a disciplinary hearing is essential. The persons hearing the disciplinary allegations should take the following action:-

- familiarise themselves with the disciplinary procedure
- discuss the employee's record with the HR Manager or Employee Relations Manager to establish if there are any current disciplinary warnings, health of welfare problems

- consider with the Employee Relations Manager, similar disciplinary offences to ensure a consistent approach
- consider if any witnesses should be called and what documentation is required
- ensure that an adequate investigation has been undertaken. If any aspects require further investigation, the hearing should be convened until further information is available
- contact the employee's Trade Union representative. If the employee is a Trade Union representative, the Full Time Official must be informed.

### The Disciplinary Hearing

The panel should make an opening statement giving reasons why the hearing has been called and indicating that disciplinary action may result. The hearing should then:-

- consider the investigation reports, examine statements and call witnesses as necessary
- allow the employee to question witnesses
- allow the employee to state his/her case and call witnesses
- question employees' witnesses if necessary
- allow mitigating factors to be raised – ie health or long service
- examine any current disciplinary warnings
- adjourn and take further advice if necessary
- decide action to be taken
- re-convene and give decision
- advise employee of right of appeal.

### The Disciplinary Sanction

The Disciplinary Panel may decide, having heard all relevant evidence and any mitigating circumstances, that there is no case to answer and the alleged breach of discipline will be dismissed.

If, however, the allegation is substantiated, then the panel must determine the appropriate disciplinary action ( see Disciplinary Procedure)

Consideration should be given to:-

- (a) the seriousness of the offence
- (b) any relevant disciplinary sanctions still 'live'
- (c) any mitigation put forward by the employee which is considered relevant
- (d) similar cases and circumstances giving due regard to consistency.

### After the Disciplinary Hearing

The opportunity should be taken to review the handling of the case and/or policies and procedures. Standards may need to be reinforced or training needs identified which may be relevant to the Force.

If the employee is cleared of the alleged disciplinary offence, it is important to de-brief any employees who were aware of the allegations. Any disciplinary action is confidential and should only be disclosed to individuals who need to know about it.

### Dismissal

Dismissal may be necessary where an employee has failed to improve after being given one or more disciplinary warnings or if the employee has committed an act of gross misconduct. Gross misconduct occurs where the employee's actions are so excessive that the employer can no longer tolerate the employment. Dismissal should be the final step and must be reasonable in all the circumstances of the case, with mitigating factors taken into account. The decision to dismiss must be regarded as a reasonable response.

#### (a) Gross Misconduct

Alleged gross misconduct will normally lead to immediate suspension pending a disciplinary investigation and hearing.

If the allegation is confirmed following the disciplinary hearing, this may result in instant dismissal (summary).

Examples of Gross Misconduct are listed in the Discipline Procedure. The list is not exhaustive and there may be other offences of similar gravity.

#### (b) Suspension

In certain circumstances it may be necessary to suspend an employee formally whilst investigation of the alleged offence is conducted. A Head of Department/Divisional Commander following consultation with the Head of PSD and ACPO Officer may only suspend employees.

The purpose of the suspension is to enable a full and fair examination of the facts and determine whether an offence has been committed.

Employees suspended from duty will receive full basic pay in accordance with their contract of employment, ie excluding shift allowances, stand by and call-out payments, unless these are consolidated as part of basic pay. Other allowances will be suspended.

The use of suspension with pay should be considered in cases where:-

- the employee is accused of gross misconduct
- it is necessary to suspend the employee in order to carry out an investigation. The employee's presence at work may inhibit investigation and potential witnesses may feel intimidated. This is particularly relevant in cases of assault or harassment. (The Force may lay itself open to a civil claim if a further act is committed which would not have occurred had the employee been suspended)
- it is in the employee's own interests to be suspended.

Suspension can take place at any time after the allegation becomes known. If suspension initially seems inappropriate, this will not prevent it being considered at a later date should additional information be obtained during the course of investigation.

### Criminal Offences

Legal proceedings, or convictions relating to a criminal charge should not be treated as automatic reasons for dismissal. The main considerations should be whether the offence is one that makes the employee unsuitable for their type of work or unacceptable to other employees or how it might adversely affect the performance of the employee's duties.

In the event of any such act which is considered to be connected with the employee's work, disciplinary action may proceed without awaiting the result of a separate police criminal enquiry. Provided a thorough investigation has been undertaken, there is no requirement to wait for the criminal case to be determined.

In all cases, the Head of PSD, will need to consider whether the conduct is sufficiently serious to commence disciplinary procedures. Employees should not be dismissed solely because a charge against them is pending.

It is important to ensure that an investigation is carried out as thoroughly as possible on the evidence available and any decision is reached on the balance of probability. Disciplinary action can be taken prior to the criminal offence going through the Courts and a conviction recorded provided that the Force has acted reasonably in the circumstances and on the evidence available.

Employees who are suspended may request that disciplinary action or investigation is postponed until after the criminal charges have been heard. There is no requirement for this to be granted but the request must be considered.

Should this request be made, it is essential that consideration is given to the evidence. If the evidence is strong and the employee has given an explanation, the Force can take appropriate action. If the employee has declined to provide a statement as part of the investigation, a decision to proceed with the disciplinary hearing should be based on the evidence available. In some cases it may be necessary to await the outcome of criminal action.

If an employee chooses to remain silent or declines the opportunity to attend a disciplinary hearing, this should not prevent the disciplinary process continuing and a decision for disciplinary action made.

It should be noted that a different standard of proof is required in civil and criminal cases. An Employment Tribunal will take into account if a reasonable investigation has been undertaken. The standard of proof in criminal courts is "beyond reasonable doubt" There will be situations where an employee is found not guilty in a criminal court for an offence whilst at work, but where dismissal may be fair due to the different standard of proof which is "on the balance of probabilities".

### Sobriety at Work Issues

The consumption of alcohol can affect performance at work. The Force expects all police staff to be able to perform duties without impairment.

Staff should not consume alcohol when on duty unless specifically authorised to do so by a line manager.

When considering disciplinary action concerning the use of alcohol or drugs, it must be established whether it is a medical condition or the resulting behaviour which is causing the problem. This is important as to whether the issue is dealt with as capability or misconduct.

Where an employee is suffering from an alcohol or drug dependency which leads to diminished performance and/or sickness absence, the employee should be referred to the Occupational Health Physician to consider the nature of the condition, what treatment is necessary, the duration of any condition and the impact on employment.

If an employee has committed an act of misconduct caused by the consumption of alcohol or drugs, it may be more appropriate to use the disciplinary procedure and take medical opinion into account when deciding the appropriate sanction.

Medical opinion should always be sought where it is believed that alcohol or drugs are a factor in the employee's conduct.

### Drink/Driving Offences

A drink/driving offence for a support staff member may not lead to disciplinary action . Each case must be considered on its merits and the impact the conviction may have on the role of the employee. Factors to consider are:-

- is driving a major part of the employee's role
- was the offence committed whilst on duty
- was there an attempt to avoid arrest
- was there an attempt to interfere with the process, by leaving the scene or improperly using the position of a support staff employee.

### Other Considerations

#### Employees who are Ill During the Disciplinary Process

An employee who is subject to disciplinary proceedings may self-certificate or provide a medical certificate during the process. If this is short term (less than four weeks), the process can be held pending until the employee's return. Where there is prolonged absence of more than four weeks, an appointment should be arranged with the Occupational Health Physician to establish if the employee is fit to continue with the disciplinary investigation and hearing.

Although an employee may be unfit to perform their normal duties, they may be fit enough to attend a disciplinary interview.

#### Refusal to provide evidence or attend a Disciplinary Hearing

If the employee refuses to co-operate with the investigation and stays silent at interview, the employer is entitled to reach a decision on the basis of all other evidence.

If the employee is subject to criminal proceedings, they may have had legal advice to remain silent so as not to prejudice the case. The employee should be made aware that the burden of proof differs in disciplinary proceedings and that staying silent may prejudice employment.

An employee who refuses to attend a disciplinary hearing should be advised that, if they continue to refuse to attend, the proceedings will continue in their absence and a decision taken. The employee should be given a further chance to re-consider and a deadline should be set beyond which the process will continue.

Should there be a prolonged delay, a deadline should be set for a hearing to take place and advise that the hearing will be made in the employee's absence if necessary.

## NOTES FOR INVESTIGATING OFFICERS

### Aim of the Investigation

The aim of any investigation is to establish the facts without delay. Confidentiality must be maintained at all times and the investigation should be carried out as discreetly and sensitively as possible.

It should be emphasised to the employee being investigated that the investigation is an objective and non-judgemental enquiry into the facts and to search for evidence which either supports or rebuts any allegations.

It is essential that evidence be gathered quickly. This may require interviewing employees or members of the public at their homes. If the employee being investigated is suspended, suspension allows for the employee to attend an interview. The investigating officer should make arrangements to interview the employee either at the employee's home or at a UNISON office.

If the employee submits a medical certificate whilst suspended this should not delay the investigation. An appointment will be arranged for the employee with the Occupational Health Unit to establish if he/she is fit to undertake an interview and attend a disciplinary hearing. If the employee is declared unfit, the investigation should continue as far as possible. Dependent upon the circumstances, it may be necessary to proceed in the employee's absence but with UNISON representation. A decision will then be made on the facts available.

### Notice of the Allegation

Employees will be advised as soon as possible of any allegation or complaint against them and that an investigation will take place. The investigating officer should liaise on a regular basis with the PSD/HR Department to ensure that the employee is kept up-to-date with the course of the investigation.

### Representation

The employee being interviewed in connection with the disciplinary offence has the right to be accompanied by a UNISON representative or work colleague (not acting in a legal capacity).

Should the employee not wish to be accompanied it should be confirmed at the beginning of the interview that they wish to continue without representation and identified in the interview notes. If the representative is unavailable, the employee should be asked if they wish to continue or arrange another interview date.

#### 1. Preparing for the Investigation

- a) The investigator should plan the investigation together with PSD/HR advice and support. The investigator should have the relevant authority, distance from the allegation and it is desirable to have knowledge of the systems/processes, which may be involved. The investigator should be a member of staff who has no involvement in the day to day running of the area being investigated. This ensures objectivity and is less likely to damage working relationships.
- b) Be aware that investigating too early may not ensure that all the facts and evidence are collated

- c) However, there should not be a lengthy delay in commencing the investigation as this may lead to loss of evidence.
- d) The investigation is within the terms of the Police Staff Discipline procedure and as such there must be a clear distinction that the investigatory interview is not part of the disciplinary hearing. It is NOT necessary to give a caution at the commencement of the fact-finding interview.
- e) The Investigating Officer must keep an open mind as to the findings of the investigation.

## 2. Witness Statements

- a) determine who to interview – it may be necessary to take a broader view of the investigation and then narrow down the issues involved. It is essential to interview all staff who are relevant to the case – this may be work colleagues, line managers, members of the public, persons present at the incident – all parties connected with the allegation even if they have a small role.
- b) Statement Guidelines:  
 Include date, time and place of each or any observation or incident  
 Detailed analysis of incident and who was present  
 Whether they had the opportunity to observe clearly and accurately
- c) Include the knowledge of systems and procedures by all relevant staff – for example, the supervisors, work colleagues and the relevant member of staff. What are the formal policies and systems and what actually happens in practice.
- d) A witness who wishes to remain anonymous for fear of safety or victimisation may make allegations. A principle of natural justice is that employees accused of misconduct should have the opportunity to challenge the evidence of witnesses testifying against them.

The following guidelines should be considered: -

The information from the witness should be put in writing, omitting any parts, which identify the witness.

The written statement should detail dates, times, places of any observation or incidents.

The investigating officer should aim to corroborate the anonymous witness statement with further evidence.

## 3. Effective Questioning

- a) General opening – open questions but do not assume anything – a general opening of “tell me about” opens up the interview and allows for further follow up and detailed questions. Let staff talk broadly to establish useful data – do not start with narrow criteria. Use of open questions can assist this process
- b) Use of closed questions can assist in narrowing down the information, obtain clarification and establish fact.
- c) Use of challenging questions should be left until the end of the interview – you may not get the information needed if used early on.
- d) Silence can be appropriate – can allow individual to review any clear evidence that you have and consider their response.

- e) Keep to the facts and experience of the individual
- f) Avoid opinion and hearsay
- g) Listen to the response
- h) Avoid leading and multiple questions. Use open questions, which invite information.
- i) Questions should be asked which elicit information and are not being asked in order to prove the allegation.

#### 4. Effective Note Taking

- a) Techniques can include use of a time line – allows you to narrow down for more closed questioning and get to the detail of the allegations – can place witnesses clearly into the time line and assists in pulling a chronology together. Useful for a factual overview.
- b) If investigating a stressful experience may be useful to start at the end and go back through the experience – can assist in getting extra level of detail.
- c) Taping of the interview can be useful and should be agreed. Copy of the tape and transcript should be provided to individual and their representative.
- d) Write up ASAP.

#### 5. Interviewing the Employee

In all cases the employee and witnesses should be given notice of an interview and told that they may be accompanied if they wish.

The interview should be carried out away from the normal place of work if possible and where there will be no interruptions. The investigator should explain the purpose of the meeting and the need for confidentiality.

A written record of the interview should be kept and where possible a signed statement should be obtained from each individual.

Interviewees should be advised that a further meeting might be necessary should the investigator need to clarify or corroborate evidence from another source.

At the end of the interview the investigator should summarise the information provided. This ensures that all parties agree as to the evidence given and allows the interviewee to add anything else, which may have been forgotten.

If the employee refuses to give evidence or provides an unsatisfactory explanation, it will be for the Disciplinary Panel to conclude which evidence is to be believed and whether on the evidence available a disciplinary sanction is appropriate.

#### Summary

- a) Ensure they know the nature of the complaint
- b) Make clear it is not a disciplinary interview
- c) No caution is required – not police misconduct

- d) Allow employee to state case
- e) Call adjournment if new facts arise
- f) Consider all relevant circumstances.

#### 6. Documentation

- a) What is relevant – what are all the possible areas of evidence, link up witnesses to written/relevant evidence. As part of the investigation, the investigator should examine all written evidence, time sheets etc, relevant Force policies and procedures, the Disciplinary Procedure for Police Staff and Notes of Guidance on its operation.
- b) Consider how each piece of evidence could be proved – by witness or document
- c) Secure original documents
- d) Check who completed the document, why and when. Transcribe any unclear writing.
- e) Explore the reasons for any changes or alterations or marks on the documents and who made them
- f) Where the disciplinary allegation relates to a failure to adhere to policy or rules, the investigator should establish how the employee was made aware of these. It may be necessary to check training records.

#### 7. Systems Analysis approach to Investigation

##### Consideration of the below factors are good practice for the investigation

- a) multiple causes are likely – are there any other dimensions to the allegation
- b) there may be immediate and underlying causes – the individual or the job or work environment
- c) Recognition of an informal structure of rules and procedures (i.e. the way things are really done) – it is essential that this is recognised by the investigating officer – needs exploration as to what really happens in practice –essential for the final decision making process in respect of disciplinary action.
- d) Identify personal responsibilities – what is/was the person actually required to do/have responsibility for
- e) May need to identify any corrective actions.

#### 8. Preparing an investigation report

Having interviewed all relevant witnesses, the investigator should determine whether anyone needs to be seen again. This would be necessary where accounts differ or to corroborate information.

The investigator should prepare a written report and forward to the Employee Relations Manager or Head of Personnel. The report should not make recommendations but should include a list of those interviewed (including dates), a factual account of the information gathered, copies of notes and witness statements and any other evidence obtained. The report should highlight corroboration of the facts or inconsistencies.

The report may be structured as follows: -

- a) Background
- b) History of unit/section
- c) Role of staff involved and period of working/employment. Information should also be gathered on the member of staff to include length of service, overall work performance, any 'live' disciplinary warnings. It may be useful to establish whether a similar incident has occurred before in order to establish a consistent approach. Advice should be obtained from the HR Department.
- d) Essential to have time line/chronology
- e) Allegations and process of investigation. List the allegations being considered and whether these were stated originally or have emerged during the investigation. The allegations may refer to specific acts, or to the omission of specific acts, or to a more general failure to perform to specific standard.
- f) Take each allegation in turn, setting out the evidence for and against each.
- g) Outline of main points
- h) Outline possible contributory factors/underlying causes
- i) Outline responsibilities
- j) Work through each element of the case
- k) Set out conclusions but not own views or recommendations
- l) Appendices – note of witnesses spoken to and documents

Note: The length of time taken to investigate and the resources required.

#### The Investigator's Role at Disciplinary Hearing

The investigating officer will present the case to the disciplinary panel. Both the panel and employee may ask questions of the investigator.

**NOTES OF GUIDANCE – DISCIPLINARY PANEL**

Once the investigation has been completed, the report from the Investigating Officer is forwarded to the Head of PSD/HR. A disciplinary hearing is then convened. The hearing is:-

- (a) to enable the employee to present any information or explanation to the panel for the breach of discipline
- (b) for the disciplinary panel to consider:-
  - (i) the report from the investigating officer
  - (ii) the information/explanation from the employee
  - (iii) to question the employee and any relevant witnesses in respect of the breach of discipline
  - (iv) to decide on the appropriate action to be taken.

The panel will proceed with the hearing as follows:-

- hear the employer's case, calling witnesses or examining statements as necessary
- allow the employee to question witnesses
- allow the employee to state their case and to call witnesses relevant to the breach of discipline
- question the employee's witnesses, if any
- adjourn to decide action to be taken
- re-convene and announce the decision
- advise the employee of any appeal rights (Police Staff Discipline Procedure)
- confirm the decision in writing.

The burden of proof within the Disciplinary procedure is on the balance of probabilities. This means that the panel has to decide whether it is more likely than not that the evidence is to be believed. There is no requirement that the breach of discipline has to be proved beyond reasonable doubt.

**APPEAL AGAINST DISCIPLINARY ACTION – PROCEDURE BEFORE APPEAL PANEL**

1. The Investigating Officer will be responsible for re-presenting the case or Chair of Panel IF Stage Four - Dismissal
2. The appellant or Trade Union representative can question the representing officer and witnesses.
3. The panel can question the representing officer and witnesses.
4. The appellant or representative will put their case and call witnesses.
5. The representing officer can ask questions of the appellant.
6. The panel can ask questions of the appellant.
7. The representing officer and appellant have the opportunity to sum up and then withdraw.
8. The panel will consider the appeal and decide whether to allow or dismiss the appeal. The appeal hearing will review the disciplinary action imposed but will not increase it. All appeal decisions are final.
9. The decision of the panel will be announced and confirmed in writing within seven working days.

**NOTES FOR EMPLOYEES SUBJECT OF A DISCIPLINARY INVESTIGATION**1. The Process

- 1.1. These notes set out the process to be followed in respect of a disciplinary investigation. These notes have been produced in order to ensure that you are fully aware of the procedure and processes, which will be followed. If there is anything you do not understand please feel free to discuss further with a colleague, your Trade Union representative or the Employee Relations Manager/Hearings Officer PSD

2. The Investigation

- 2.1. You will appreciate that the Force has a responsibility to investigate such allegations. To do this it will arrange for an investigating officer to carry out a disciplinary investigation.
- 2.2. It may be that as part of the investigation the investigating officer will wish to meet with you. This will be to clarify facts and to bring you up to date with the investigation. The opportunity to give your point of view will come at the formal disciplinary interview.
- 2.3. You will be able to discuss the matter with the investigating officer and to make a statement. You should note that what you say will form part of the investigating officers' report.
- 2.4. At all stages during the process you may be accompanied by either a work colleague or a UNISON representative who may support you.
- 2.5. Once the investigation has been completed a report will be compiled and given to the Head of HR/PSD for consideration.

3. The Disciplinary Hearing

- 3.1. You may then be called to a disciplinary hearing where the evidence collected will be examined and reviewed. Anything you wish to say will be taken into account and a decision made as to what action, if any, to take.
- 3.2. You will be given notice of the hearing. You will be given a copy of all the documentation collected as part of the investigation and which forms part of the allegation to be considered. This may include signed statements from other people.
- 3.3. The hearing will be in two parts; the initial interview followed by a communication of the decision. The two parts will be separated by an adjournment for the panel to consider the evidence you have given.
- 3.4. The outcome of the hearing may be to impose a level of warning, dismissal or rejection of the allegations made. If any formal warning is given you will have a right of appeal to a higher level of authority.

#### 4. Confidentiality

- 4.1. For our part we will ensure that the matter is treated with the utmost confidence and that files are seen only by those directly involved in the investigation and hearing. All staff interviewed will be made aware of the need to treat the matter in strict confidence and to discuss it with no one else. We expect you to do the same.
- 4.2. Although the investigation is being carried out this does not imply that managers have already formed a conclusion. You may be assured that no decision will be made until after all factors have been investigated and you have had a chance to explain your actions to those carrying out the hearing. There is no presumption of guilt.
- 4.3. The investigation will be carried out as speedily as possible. We do not wish you to suffer any more stress than is absolutely unavoidable. If the investigation is likely to be prolonged we will keep you advised.

#### 5. Suspension

- 5.1. It may, regrettably, have been necessary to suspend you from duty. Again this does not imply guilt; reasons for suspension are varied and may be for your own benefit.
- 5.2. All suspensions will be on full basic pay.
- 5.3. Suspension may bring with it certain other restrictions, eg staying away from your place of work, not speaking to staff etc. You will be advised separately of the specific instructions appropriate to your situation.

#### 6. Support

- 6.1. We recognise the stress attached to this situation. If you wish to seek independent advice and counselling please contact Care First.

**NOTES FOR EMPLOYEES CALLED TO A DISCIPLINARY HEARING**

1. You will appreciate that by calling you to a formal disciplinary hearing, management have taken a serious view of the alleged disciplinary offence. They will require detailed explanations of each matter before deciding what action, if any, to take.
2. Any documentation will most likely include statements from members of staff. If this is the case then you may be assured that the staff concerned have been made aware that their statements may be seen by you and that they have had the opportunity to check them. All staff involved are aware that these papers are confidential.
3. The procedure for the disciplinary hearing will be formal but with the flexibility to allow for specific situations. The hearing panel will consist of at least two people, a Senior Manager accompanied by a senior representative of the HR Department. Neither person will have been involved in the disciplinary investigation. In some instances a further person will also be in attendance to take notes of the interview.
4. The intention of the disciplinary hearing is to consider evidence both from the investigating officers and yourself, listen to any other relevant comment and come to a conclusion.
5. You may call witnesses to cross-examine. Any witness you wish to call should be made known to the Employee Relations Manager/Hearings Officer in writing, along with the reason why each witness will attend, before the Hearing. This is so the necessary administrative arrangement can be made.
6. The disciplinary hearing will proceed with both sides having the opportunity to review the facts, and make any other relevant statements. When this process has been completed the disciplinary hearing panel will retire to consider their decision.
7. In most instances there will only be a short delay before a decision is made. In certain circumstances, however, the information given will necessitate a longer delay. Sometimes this will necessitate further evidence being collected. In every case, however, a decision will be made as soon as possible.
8. When the disciplinary hearing panel reconvenes they will outline their decision. At this stage they will give a detailed explanation of the decision and what appeals, if any, are open to you. Unless the decision is a retraction of the allegations or the issue of an oral warning then you will have the right of appeal.
9. A formal letter will be issued to you setting out in detail the decision of the panel and any rights of appeal you may have.

**NOTES FOR WITNESSES**

1. A disciplinary investigation is being carried out. As part of this process you are being interviewed as a witness. You are entitled to bring along either a work colleague or a Trade Union representative, to the meeting.
2. Notes will be taken at the meeting. A summary of the meeting will be typed up. You will have the chance to check and amend it if you wish. The notes, along with others, may form part of the report of the disciplinary enquiry.
3. If the evidence from the investigation suggest that something inappropriate has occurred then a formal disciplinary hearing will take place. The employee subject to the investigation will have the opportunity to read all the papers that make up the investigation. These include your notes. The employee subject to the investigation can challenge a statement and ask for any witness to attend the interview in person.
4. In the vast majority of cases the statement, once made, is the end of the matter. Only in a very few cases is there any need to be involved further.
5. One last point: the investigation may continue for some time. Other staff may be interviewed. It is important that all statements are factual. You are requested, therefore, to keep the matter **confidential**.
6. Thank you for your help and co-operation in this matter.
7. If you are unclear about any of the points described above please feel free to contact the Employee Relations Manager/Hearings Officer PSD