



NORTHAMPTONSHIRE OFFICE OF THE POLICE, FIRE AND CRIME COMMISSIONER DISCIPLINARY POLICY AND PROCEDURE (Except Statutory Officers)

This policy applies to all OPFCC employees with the exception of:

- Chief Officers (Head of Paid Service, Monitoring Officer, Section 151 Officer)
- In those cases where dismissal arises:
 - through capability and/or ill health
 - from organisational and efficiency requirements
 - in relation to probationary procedures

Policy Version Control			
Version	Date	Summary of Changes	Author
V2	April 2019	Reviewed and updated	Stuart F. McCartney
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INTRODUCTION

The OPFCC seeks to ensure that lawful, fair and effective arrangements exist for dealing with employee conduct and disciplinary issues. The OPFCC's Disciplinary Procedure provides a framework for ensuring that employees are made aware of unacceptable conduct and for developing ways of correcting any such issues whenever possible.

The OPFCC accepts that before employees can be expected to reach required standards of conduct and job performance, it is essential they have been provided with appropriate training and appropriate levels of guidance and supervision. The procedures used for dealing with misconduct are different from those used when dealing with work performance and capability.

This policy and its associated procedure will be applied in those cases where an employee is judged capable of carrying out their work duties to the required standard but for some reason chooses not to.

In cases of work performance and capability the OPFCC's Capability Policy should be used unless the incident itself is so serious as to justify initiating disciplinary procedures.

OBJECTIVES

The objectives of this policy are to ensure that:

- The OPFCC meets all relevant legal requirements regarding disciplinary decisions it takes in relation to employees.
- Employees are treated in a fair and consistent manner in relation to conduct and disciplinary issues.
- Managers are supported in carrying out their responsibilities for the maintenance of high standards of conduct of all OPFCC employees and that standards of conduct of individual employees are improved, wherever necessary and practicable.
- The OPFCC, its employees, clients, the public and recipients of OPFCC delivered services are protected from the consequences of misconduct.

PRINCIPLES

At all stages in the OPFCC's Disciplinary Procedure employees will be:

- informed of the nature of the issue(s) of concern or case against them
- given a chance to offer an explanation before any decision is taken
- given the right to be represented by a OPFCC work colleague or a recognised trade union representative or official, at any formal meeting or hearing
- given reasonable notice of any formal meeting or hearing as outlined below
- notified of the outcome of any formal meeting or hearing in writing
- given a right to appeal against formal disciplinary action
- confident the OPFCC will comply with its obligations to disabled employees under the Equality Act 2010 in terms of reasonable adjustments
- treated with dignity and respect at all times
- recognised to be in a situation of potential stress/anxiety and be treated accordingly
- confident they will not be judged "guilty" in advance of the conclusion of the process

- confident that communication will be treated confidentially with access to any information only accessible to others who are required to know on a limited basis.
- confident the process will be carried out in a timely manner and without undue delay

ROLES AND RESPONSIBILITIES

MANAGERS

Ensuring employees understand OPFCC rules, practices and procedures and for applying the policy in a fair and consistent manner.

To consult with the relevant HR Adviser for advice and assistance on disciplinary issues prior to taking any formal action.

Developing a culture where employees are supported and assisted in achieving and maintaining the required standards of conduct.

Through normal performance management meetings i.e., one-to-ones, supervisions, appraisals etc., address and resolve work conduct issues informally and promptly as appropriate.

To record details of all meetings with the employee under this procedure, including any targets set, monitoring and support.

To keep a copy of the notes of meetings, letters to the employee and any ad hoc verbal feedback given during the monitoring period and place in the employee's "supervision" file where this process is used. If individual "supervision" files are not used, it should be placed in a designated confidential and secure location within the department. Only letters relating to the formal procedure should be on the employee's personal file.

Managers should ensure that all documentation relating to disciplinary issues are retained in accordance with the OPFCC Retention and Disposal Schedule Guidance

Should the matter progress to a Disciplinary Hearing, to present the details of employee's failure to meet and maintain the required standards of conduct, including all relevant performance information and the outcome of performance improvement plans/record of actions to date.

Where the matter concerns a safeguarding issue, ensure that the Safeguarding Vulnerable Adults Team or the Local Authority Designated Officer (LADO) are aware.

HR ADVISERS

HR Advisers provide advice to managers in the application of this policy and its associated procedure.

EMPLOYEES

Employees have a contractual responsibility to be aware of and conform to the OPFCC's values, rules, policies and procedures and to co-operate with any investigations, to attend any meetings, interviews and hearings convened in accordance with this policy and its associated procedure.

TRADE UNION REPRESENTATIVES

The standards required from employees will apply to Trade Union Representatives employed by the OPFCC.

However, where application of formal disciplinary action is being considered against a Trade Union Official or Representative, the case must first be discussed with a Senior Trade Union Representative or full time Official in accordance with the ACAS Code of Practice.

STANDARDS OF CONDUCT

OPFCC employees are expected to maintain high standards of conduct at all times.

The OPFCC's Code of Conduct (and relevant professional Codes of Conduct) expands further on some of these standards.

This includes covert electronic, audio or video recording, by any device, of meetings or discussions in the workplace or whilst on OPFCC business unless express authorisation has been received from the appropriate senior manager prior to any such recording taking place.

Where the nominated note taker at meetings and/or hearings associated with the process feels it is necessary to make an audio recording in order to support with the preparation of the notes, the requirement to make the recording will be clarified with all present at the start of the meeting.

SAFEGUARDING CONCERNS

Where the matter concerns a safeguarding issue, i.e., there is a concern regarding the conduct of an employee in respect of a child or a vulnerable adult, the manager must ensure that the Safeguarding Vulnerable Adults Team or the Local Authority Designated Officer (LADO) are aware. In some cases, for example, where an individual is in a notifiable occupation, the Safeguarding Vulnerable Adults Team or LADO may already have been made aware by the Police Service and would inform the manager accordingly.

ALLEGED CRIMINAL ACTIVITY

An employment investigation may run in parallel to a police, audit and/or child protection or adult abuse investigation and should not be held up by any such investigations unless considered prejudicial to those investigations to proceed. It is not always necessary to await the outcome of any court hearing before deciding on disciplinary action.

An employee who provides information on criminal acts, breaches of legal obligations, health and safety dangers, environmental risks and related cover ups will have the right not to be dismissed or victimised for speaking out on such malpractice. For further information see the OPFCC's Whistleblowing Policy.

SUSPENSION AND TEMPORARY TRANSFER

It may be considered appropriate, after careful consideration to alternatives to suspension, to suspend an employee from work or have them temporarily transferred to work elsewhere, e.g., in cases where the allegations are serious or to facilitate an investigation. Such actions do not constitute disciplinary action or imply guilt on the part of the employee. The

suspended employee will be given support and issued with appropriate guidance. The suspension (or temporary transfer) will be kept under regular review. For further information see the OPFCC's Management Guidance on Suspension from Work.

ADDITIONAL RELEVANT POLICIES

Capability Policy

DISCIPLINARY PROCEDURE

MINOR CONDUCT ISSUES – INFORMAL STAGE (INCLUDING PRELIMINARY INVESTIGATIONS)

On becoming aware of an employee's alleged misconduct, management (normally the line manager) will undertake, where practicable, immediate preliminary investigations about the issues of concerns or allegations made. This will normally involve a private discussion with the employee to establish if there is an acceptable explanation for the alleged misconduct. It is not usual for employees to be accompanied at this meeting. However, they may be if both the manager and the employee consider it appropriate.

The manager should:

- Present the details of the alleged misconduct to the employee.
- Give the employee a full opportunity to respond and explain any factors that may be affecting their conduct (if any underlying medical issues are suggested, it may be appropriate to refer the employee to Occupational Health for advice).
- Give thorough consideration to all the employee's responses and decide what action is required. It may become apparent during the discussion that the problem is not a disciplinary matter and that other procedures, e.g., those relating to capability or reasonable adjustment, may be more appropriate.

A manager will need to determine if an issue can be resolved informally. This will depend upon factors such as the seriousness of the complaint/allegation and the impact on others, e.g., service users, partners, other employees and the public. The manager should consider whether informal action could quickly and easily be taken to resolve the matter and should make every effort to resolve the matter in this way, immediately, wherever possible.

NB: Any case concerning an employee's conduct in respect of a child or vulnerable adult, where the Safeguarding process is applied, and any case of fraud or theft, will be deemed a major issue and dealt with by formal investigation.

Notes will be taken of the manager's conversation with the employee and, except in the most minor cases, the outcome of the meeting, including any remedial action, will be recorded.

Notes of discussions on minor conduct issues will normally incorporate:

- A clear statement of what was discussed with regard to the employee's conduct and an explanation of why this is unsatisfactory.
- The required level of improvement discussed and (wherever practicable) agreed with the employee. These should be in measurable terms such as quantity, quality, frequency, timing, etc.
- How management will assist the employee (if applicable) to meet the required standards.

This record is not a formal warning, which will be made clear, and should be phrased in a constructive and helpful manner.

A copy of the record will be given to the employee and a copy placed on the employee's

supervision file. If supervision files are not used, it will be placed in a confidential and secure location within the department. It will not be placed on the employee's personal file.

Employees, who disagree with the content of the record have the right to ask for their written comments to be added.

The manager should remove the record from such files 6 months from the last action/entry

Where an employee admits to an allegation at an informal stage and the manager feels that the allegation is serious enough to warrant formal disciplinary consideration, the manager and employee will make and sign a written record of this. The manager will ensure the employee appreciates the implications of the admission, i.e., that the matter will be fully investigated and may be considered at a formal Disciplinary Hearing.

MAJOR CONDUCT ISSUES – FORMAL STAGE

If the manager determines that the matter cannot be dealt with by informal action, they will with advice from HR, determine whether a Strategy Meeting should be held and how the investigation should progress.

NB: A Strategy Meeting will normally only be required where the issue:

- Involves a complex safeguarding issue (see Safeguarding Concerns section, below)
- Is complex, sensitive, involves potential criminal activity, and/or includes multiple people or counter allegations
- Is fraud or theft, including misuse of OPFCC property

The above list is not exhaustive and HR advice should be sought for all cases

If a Strategy Meeting is not required, the manager will need to decide whether the employee remains in the workplace and if the investigation needs to be management, internal audit led or, exceptionally, undertaken by an external Investigator. A risk assessment and communication plan should also be completed where considered necessary.

If a Strategy Meeting is required, it will normally be arranged by the manager (or by the HR Adviser if agreed).

The Strategy Meeting will normally involve the relevant manager (Lead Manager), a HR Adviser (and a representative from audit if required). Dependent upon the nature of the allegation(s) there may be a need for other professionals to attend also; especially if there are other investigations taking place into the allegation(s).

Other possible attendees include:

- Member of the Safeguarding Vulnerable Adults Team

- Local Authority Designated Officer (LADO)
- Representative from Legal Services

NB: The above list is not exhaustive

In normal circumstance a Strategy Meeting will take place before any decision is made regarding the alleged concerns. However, in certain circumstances, decisions (for example regarding suspension) need to be taken quickly and the employee(s) concerned may already be suspended from work or temporarily transferred to another section/work base, before the Strategy Meeting is held. In these circumstances the Strategy Meeting should be arranged at the first available opportunity; normally no later than 5 working days after the suspension or temporary transfer.

The purpose of the Strategy Meeting is to:

- decide on whether the investigation is to be a management, audit or, exceptionally, external Investigator led (allegations involving fraud and theft will normally be investigated by audit)
- clarify the allegations/objectives of the investigation and draft the Investigation Brief
- consider whether suspension or temporary transfer are necessary (or should be continued if already suspended/temporarily transferred)
- complete a
- agree a communication plan
- determine support arrangements (for the employee(s) concerned, and possibly the complainant(s) and witnesses)
- set dates for any Strategy Review Meetings or preferred update mechanism, agree sharing of investigation interviews where multiple investigations are taking place

It is the Lead Manager's responsibility to email the completed documents to all attendees following the Strategy Meeting and attendees should raise any matters of accuracy as soon as possible. The HR Adviser will finalise the Investigation Brief, following the Strategy Meeting, and agree this with the Lead Manager before the investigation begins.

The decision to suspend or take any other appropriate action, such as temporary transfer, need not be made at this meeting as this may need to be taken by a more senior officer than those present. However, a deadline for making such a decision should be set and the decision maker should feedback to attendees as soon as possible.

SAFEGUARDING CONCERNS

Where the matter concerns a safeguarding issue, i.e., there is a concern regarding the conduct of an employee in respect of a child or a vulnerable adult, the manager must ensure that the Safeguarding Vulnerable Adults Team or the Local Authority Designated Officer (LADO) are made aware, if they are not already aware by other means.

If the concern is a safeguarding matter the Lead Manager will call a Strategy Meeting as soon as practicable, following the safeguarding meeting, to consider the employment implications. However, it may be possible to consider the employment issues at the safeguarding meeting as all the necessary participants should be in attendance.

Any proposed actions relating to the employee (i.e., suspension or temporary transfer and notification of investigation) will be dependent upon the actions of the relevant Safeguarding Team. Safeguarding actions must take priority until risks are satisfactorily managed.

ALLEGED CRIMINAL ACTIVITY

An employment investigation may run in parallel to a police, audit and/or child protection or adult abuse investigation and should not be held up by any such investigations unless considered prejudicial to those investigations to proceed. It is not always necessary to await the outcome of any court hearing before deciding on disciplinary action. An employee who provides information on criminal acts, breaches of legal obligations, health and safety dangers, environmental risks and related cover ups will have the right not to be dismissed or victimised for speaking out on such malpractice. For further information see the OPFCC's Confidential Reporting Code.

INVESTIGATION PROCEDURE

The purpose of the employment investigation is to determine all the relevant facts associated with the allegations and establish whether there is a case to answer.

Dependent on the case, the investigation may be led by management, a representative from audit or, exceptionally, an external Investigator. This will normally be decided at the Strategy Meeting.

Whilst this is a formal process, in order to minimise unnecessary formality and apprehension, the electronic, audio or video recording, by any device, of meetings and/or hearings will not be permitted. If you think that there are exceptional circumstances where this should be allowed (for instance, due to a disability) you should raise this in advance with the person due to conduct the meeting, the chair of the hearing or the relevant HR Adviser. Due consideration will then be given to the request and you will be advised of the outcome of that consideration.

Where the nominated note taker at meetings and/or hearings associated with the process feels it is necessary to make an audio recording in order to support with the preparation of the notes, the requirement to make the recording will be clarified with all present at the start of the meeting.

Normally within 24 hours of the Strategy Meeting (or decision to investigate) the employee concerned will be notified of the way forward (face to face meeting or letter as appropriate) and the investigation will be formally commissioned. The HR Adviser will draft a letter to notify the employee of the employment investigation; unless the employee has already been notified by a Senior Manager if a decision has been taken to suspend them from work.

DISCIPLINARY PROCEDURES AND ABSENCE

Employees subject to the disciplinary procedure, who are absent from work due to sickness, may be referred to Occupational Health for advice on assisting their return to work and/or their participation in the investigation process.

Whilst an employee may feel "stressed" and anxious under such circumstances issues will not

be put on hold indefinitely awaiting an employee's return to work.

If sickness or other absence prevents an employee attending a Disciplinary Hearing it may be postponed and re-arranged within 5 days or as soon as practicable.

Employees will be advised at that time that if they fail to attend the re-arranged hearing, then their case and/or representation may be considered by management in their absence, based on the written submissions.

EMPLOYMENT INVESTIGATION OUTCOMES

On completion of the investigation, the investigation report is sent to the Lead Manager and the HR Adviser. A meeting may take place with the HR Adviser, Lead Manager and the Investigator, to help clarify any points of fact or evidence and for the Lead Manager to determine what the next steps will be.

The reason for reaching this decision should be recorded and should be made within 5 working days of the completed report.

The employee is notified, in writing, of the investigation outcome by the Lead Manager.

The following outcomes as a result of a formal employment investigation being undertaken are:

No Further Action

If it is decided the allegations do not justify further action or there is no evidence to substantiate the allegations, the effect on the employee(s) involved, along with other factors, will nevertheless be considered.

This may be particularly the case where an employee has been suspended or temporarily transferred during the investigation. In such instances, arrangements will need to be made for the employee's return to their place of work.

It may be necessary to carefully plan and manage the reintegration of the employee as they may have been away from where they normally work for some time.

It may also be considered appropriate to have the employee transfer, voluntarily, on the same grade, to another section or work base. Any such considerations should be discussed with the employee concerned as a possibility at this time.

Informal Management Action

It may be decided the allegations warrant informal management action. Examples of circumstances where informal management action might be appropriate are:

- Employee is advised of the need to improve a particular skill, e.g., communication style and an action plan can be put in place to support this
- Employee's conduct needs addressing but a formal sanction is considered too severe, e.g., an issue that could be resolved through improved self-awareness.

A record of any informal management action taken will be made available, noting that this is not a disciplinary sanction, and held on the employee's supervision file (or other confidential and secure place within the OPFCC if supervision files are not held).

The manager should remove the record from such files 6 months from the last action/entry.

Where it is considered that a formal Disciplinary Hearing is not necessary, the Lead Manager will provide verbal feedback to the employee concerned.

In certain circumstances (for example to protect a witness) some information from the investigation may be withheld and the reason for withholding information should be explained and recorded.

Formal Disciplinary Hearing

Where a formal Disciplinary Hearing is considered appropriate, arrangements for the hearing will be made as soon as is reasonably practicable.

A Disciplinary Panel consisting of two OPFCC Directors, with no prior involvement in the case, will hear all the evidence and decide the outcome.

HR support will be provided by the OPFCC HR Lead and an independent notetaker will attend the meeting to provide administrative support. A management representative, the employee, their representative and, normally, the Investigator will normally be in attendance. Both management and the employee can submit documentation and call and question witnesses.

The Panel Chair will confirm the arrangements to all parties giving at least 10 working days' notice.

Any documentation that either management or the employee wishes to be considered at the hearing, must be made available (where practicable) to all parties 5 working days prior to the hearing.

If there is a late submission of evidence, it will be for the Chair of the Disciplinary Panel to decide whether or not this will be accepted.

As part of the disciplinary hearing pack the employee subject to the investigation will be given a copy of the investigation report. In certain circumstances (for example to protect a witness) some information may be withheld and/or redacted.

Whilst this is a formal process, in order to minimise unnecessary formality and apprehension, the electronic, audio or video recording, by any device, of meetings and/or hearings will not be permitted. If an employee thinks that there are exceptional circumstances where this should be allowed (for instance, due to a disability) they should raise this in advance with the person due to conduct the meeting, the chair of the hearing or the relevant HR Adviser. Due consideration will then be given to the request and the employee will be advised of the outcome of that consideration.

DISCIPLINARY HEARING OUTCOMES

The OPFCC's Disciplinary Policy and Procedure allows for the following disciplinary hearing outcomes:

No Further Action

Where it is considered there is no case to answer.

Management Action

Where the alleged offence is proven but a reprimand is considered an appropriate outcome due to mitigating circumstances or the nature of the offence, e.g., a relatively minor issue.

First Written Warning

- Where the employee's conduct has fallen below acceptable standards or,
- Where the offence is sufficiently serious to justify an immediate formal sanction.

NB: The warning will be regarded as live for disciplinary purposes for between 6 to 12 months, as determined at the Disciplinary Hearing.

Final Written Warning

- Where the employee's conduct continues to be significantly below acceptable standards and previous written warning(s) have not resulted in sufficient improvement, or
- Where the offence is so serious that a final warning is appropriate as a first formal warning or
- Where dismissal would normally be appropriate but significant mitigation is accepted by management

NB: The warning will be regarded as live for disciplinary purposes for between 12 to 24 months, as determined at the Disciplinary Hearing.

All warnings will be confirmed in writing and will include:

- A clear statement of the unsatisfactory conduct or behaviour
 - The level of the warning
 - The length of time it will remain live for disciplinary purposes
 - The required level of improvement (in measurable terms)
 - The consequences of no improvement in conduct or behaviour
 - The right to appeal
- **NB:** The HR Adviser who attended the Disciplinary Hearing will prepare, on behalf of and in the name of the Chair of the Disciplinary Panel, the written confirmation of the hearing outcome. A copy of this outcome warning letter will be placed on the employee's personal file. However, it will not normally be regarded for disciplinary purposes beyond the live period determined at the Disciplinary Hearing.

Formal Management Action

The Disciplinary Panel may decide that the circumstances of a particular case are such

that, in addition to a warning, management action is also appropriate, e.g., the Panel may identify a need for the employee to undertake refresher training or work under supervision for a period of time.

Withholding of incremental salary progression

In cases in which it is decided that a formal written warning (or dismissal with notice) is the appropriate sanction any pay increment(s) due to the employee concerned (during the live period of the warning or notice period) may be withheld.

Any such increments withheld during the period of a written warning will become payable to the employee following the expiry of the identified live period, subject to the improved conduct of the employee concerned but these will not be backdated.

Dismissal

Dismissal will occur where there has been gross misconduct **OR** where the employee has a final written warning in force and further misconduct or unsatisfactory conduct has taken place.

- **Dismissal with contractual notice** - Unless an employee is dismissed for gross misconduct, they will receive the appropriate period of notice.

NB: If the employee attended the hearing and notice was given verbally the notice period starts the day after the hearing. If the employee did not attend the hearing the notice period starts 2 days after posting the outcome letter.

- **Summary dismissal** - Actions of gross misconduct will, except in the most exceptional circumstances, justify dismissal without notice.

NB: All dismissal notices will be in writing and will identify the reason(s) for the dismissal, the date on which the employment will terminate and the employee's right of appeal.

REFERRALS TO DBS AND OTHER ORGANISATIONS

The OPFCC has a legal duty to refer information to the Disclosure and Barring Service (DBS) where it has removed an individual from working or volunteering or has concerns in respect of an individual's contact with children or vulnerable adults. There may also be a need to refer the circumstances of a particular case to other professional bodies.

APPEALS

An employee has the right to appeal against any formal disciplinary action taken against him/her under this procedure. If an employee wishes to appeal the OPFCC's Appeals Policy must be followed.

RECRUITMENT

Once the decision to dismiss has been made and notice has been issued, the line manager may advertise to recruit to the post, once it has been confirmed by HR that the employee has not submitted a written notification of an appeal against the decision.