



Capability and Disciplinary policy

Northumberland National Park Authority

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INTRODUCTION

The following procedures have been drawn up to provide a framework within which all capability and disciplinary matters can be dealt with fairly and without delay. All Officers involved in these procedures will be sufficiently trained to do so and will operate within the Authority's culture and values, particularly with regard to confidentiality. All issues should be resolved informally in the first instance, unless conduct is of sufficiently serious nature to require a formal process as a first step.

This procedure applies to all Officers except the Chief Executive Officer who is covered by the JNC for Chief Officers' procedure.

CAPABILITY OR DISCIPLINARY?

CAPABILITY

If an employee may not have the innate ability required to reach the required standards for the job, the capability procedure should be used.

Where management has good reason to believe that the underlying cause of a complaint against an employee is ill health or disability, that aspect of the case should also be dealt with under these procedures. Advice must be sought from Occupational Health as soon as possible.

DISCIPLINARY

If the employee is able to reach the required standards but has lost the intent or will to do it, the disciplinary procedure should be invoked.

The Disciplinary Procedure should also be used where it is alleged that the employee has:

- failed to adhere to rules and procedures;
- failed to respond adequately to one or more informal warnings regarding conduct;
- acted (or omitted to act) in a manner that is considered to warrant formal disciplinary action;
- committed an act of discrimination or harassment contrary to any Authority policy or guideline;
- committed an act which could be deemed gross misconduct (see later sections for examples).

There will be situations where it is not immediately obvious which procedure should be used; either because the situation is unclear or because the case involves some mixture of capability, disciplinary, health or disability. In such situations, the case should be initiated using whichever procedure seems appropriate but, when coming to a conclusion, separate mention should be made of each of the relevant issues.

THE PROCESS

The process for dealing with either capability or disciplinary issues has 3 steps:

- 1) Investigation
- 2) Hearings
- 3) Appeal (in some cases)

For a summary, see flow chart on page 13.

During any capability/disciplinary process, it is important to keep delays to a minimum, (as per the ACAS guidelines) though care must be taken to ensure a thorough investigation and a fair hearing.

INVESTIGATION

- 1) A Manager should try to resolve any issue informally first, meeting the employee to ask their perception of the problem and clearly explaining the required conduct or improvement needed. If during the meeting, it becomes clear that formal disciplinary or capability procedures may be required, the Manager should immediately stop the meeting and seek HR advice.

In addition, if there is a capability issue, the Manager should consider whether any of the following are appropriate:

- Additional training and development;
- Increased supervision;
- Coaching/mentoring;
- Reasonable adjustments to the working environment or working arrangements. If it is possible that the employee could be considered disabled under the definition in the Equality Act 2010, advice should be sought from Occupational Health as to what reasonable adjustments should be made;
- Change in working practices, which will not have a detrimental impact on colleagues or the efficiency of the work area.

A written note should be made of this meeting, and a letter sent to the employee, which should state the improvement in performance required, the support or training, which will be provided, and a review period agreed. All records should be shared with the employee. If the issue is sufficiently serious to make this step inappropriate or if the required improvements are not made within the agreed time scale, the Manager should proceed as below.

- 2) Any Manager suspecting a disciplinary or capability issue should seek HR advice. If there are any suspected financial irregularities, the Director of Finance and Resources should be informed immediately.

- 3) If the matter is a conduct issue, consideration should be made as to whether suspension is appropriate. Although suspension is a neutral act, **very** careful consideration must be given, and advice must be sought from the HR Officer. Any suspension must be agreed by the Chief Executive (or Director of Finance and Resources in the Chief Executive's absence) and communicated in writing to the employee as soon as possible. Suspension should always be considered in suspected cases of potential criminal behaviour and gross misconduct. The Authority has the right to suspend with pay where there are reasonable grounds for concern that evidence may be tampered with, destroyed or witnesses pressurised or if there is a potential risk to the Authority or its employees or third parties in allowing the employee to remain at work. Suspension is not a sanction, and the period of suspension should be kept to an absolute minimum. A period of review for the continued suspension is recommended to ensure that the time period is kept to a minimum and any further enquiries are undertaken quickly. Full pay should be maintained during this period.
- 4) The Chief Executive (or Director of Finance and Resources in the Chief Executive's absence) will appoint an Investigating Officer and a Nominated Officer, both of whom will be sufficiently trained. In all cases, these should not be the same person. If dismissal is a possibility, the Nominated Officer should be at Head of Department level. The role of the Investigating Officer is to impartially weigh up all the evidence (including witness statements if necessary) to ensure a "reasonable" investigation of the facts and then present the Nominated Officer with a detailed report including making a recommendation about whether a formal hearing should be convened. The role of the Nominated Officer is to decide whether to proceed with a case and whether to impose any sanction.
- 5) The Nominated Officer should set out the terms of reference of the investigation in writing and ensure that the Investigating Officer understands the scope and depth of the investigation required. The Investigating Officer should be impartial and should be careful to weigh ALL the evidence obtained before coming to a conclusion. A thorough and reasonable investigation of the facts must be carried out. In order to conduct a thorough investigation, the Authority has the right to monitor CCTV, e-mail use, phone use etc. All those who can give evidence on the alleged poor performance or misconduct should be interviewed before speaking to the employee under investigation to obtain a clear picture of the events under consideration. Investigating Officers should be systematic in their questioning and prepare key questions in advance.
- 6) The Investigating Officer may interview the employee concerned with a minimum of five working days' notice ensuring the employee has a copy of this policy. It should be noted that this is not necessary if written evidence is sufficient to show a hearing should be convened e.g. inappropriate e-mails or letters. Careful notes need to be taken. A note-taker or electronic recording may be used if wished. In this case, the employee will be informed at the outset that the interview is an investigatory interview and that if the employee declines to attend, the absence of such an interview will not prevent a hearing from occurring. Employees must also be informed if meetings are recorded. The employee does not have a statutory right to representation at this meeting. It is very important to remember that disciplinary action should NOT be considered at this meeting. It is a fact finding exercise. Notes should be typed up and be signed and dated by the interviewer and ideally by the interviewee. The original notes and recordings should be retained on file.

- 7) The Investigating Officer will prepare a report for the Nominated Officer. The Investigating Officer should be aware that all notes taken during the course of the investigation could be required to be disclosed in evidence at an Employment Tribunal. The report should contain the following:
- i) A restatement of the brief given to the Investigating Officer
 - ii) A brief statement of the background to the investigation
 - iii) A list of the people interviewed during the course of the investigation and the documents examined, considered or consulted
 - iv) A clear statement of what happened (as far as is known)
 - v) A clear statement of what should have happened
 - vi) A clear recommendation about whether there should be any further action under the Capability and Disciplinary procedure and, if so, the degree of seriousness of that case. The Investigating Officer should not express an opinion on the level of sanction to be taken.
- 8) The Nominated Officer will then decide whether there is sufficient evidence of wrongdoing or incapability and therefore whether to proceed to a hearing. It is important that the Nominated Officer makes their own decision. Seeking advice from colleagues could prevent the colleagues from being able to hear an appeal. HR advice and support will be provided.

HEARING

The employee will be invited to a hearing, ensuring they are entitled to representation from a work colleague or union representative. Employers can consider a representative who does not fall into these categories, though it should be noted that they are not obliged to do so. If an employee requests a family member as a representative, this should be allowed in cases of stress/anxiety as this could be considered a reasonable adjustment. If the employee's representative is not available to attend, the employee may delay the meeting once by not more than 5 working days to enable the representative to attend. Not less than 5 working days' notice will be provided to the employee.

The employee will be informed of:

- the purpose of the hearing;
- the panel who will attend;
- their right to representation;
- the nature of their alleged misconduct or incapability;
- the possible outcome of the hearing including all possible consequences;
- all relevant information including witness statements;
- their right to call witnesses;
- the contact details for a Welfare helpline.

The employee should be provided with this policy and a copy of the ACAS guidance. At least 48 hours advance notice must be provided by both parties of any witnesses who will be called. For template letters, see the ACAS guide on Disciplinary and Grievances at work.

If the employee is unable to attend a hearing and provides a good reason for failing to attend (e.g. that their representative cannot attend), the hearing will be adjourned but no more than five working days after the original hearing. Unless there are exceptional circumstances, if the employee is unable to attend the rearranged hearing, the hearing will proceed in their absence. Their representative can attend on their behalf and will be given the opportunity to present the employee's case. If the employee fails to attend, without notifying the Authority, the hearing will proceed in their absence.

The panel for a hearing would typically include the Nominated Officer and the HR Officer to take notes. The Chief Executive or Director of Finance and Resources has the right to ask other employees to attend. **The Investigating Officer is there to present the case and must not be on the panel.** The Nominated Officer will chair the meeting and present the evidence including calling any witnesses.

DETAILED GUIDANCE

During any hearing, the following will take place:

- a) The Nominated Officer will introduce the hearing, explain its purpose and how it will be conducted. The purpose of the hearing will be to establish the facts and determine, on conclusion of the hearing, whether the Authority has proper grounds to take disciplinary or capability action against the employee and, if so, the level of action. The Nominated Officer should keep their own brief notes in case they are questioned at appeal or Employment Tribunal. The Nominated Officer may need to demonstrate what facts led them to have an honest belief that a capability or disciplinary issue had taken place, to show that they considered the various sanctions available under the procedure and why they chose that particular sanction.
- b) The parties present at the hearing will introduce themselves and confirm their respective roles in the hearing. The employee will be entitled to be accompanied.
- c) The Nominated Officer will state that the hearing is being conducted as part of the Authority's capability and disciplinary procedure and confirm that a written record of the hearing will be made.
- d) The Nominated Officer will confirm whether any witnesses have been asked to give evidence at the hearing, and if so, who they are. It should be noted that witnesses cannot be compelled to attend the hearing (though, they can be compelled to attend an Employment Tribunal).
- e) The Nominated Officer will ask the Investigating Officer to explain fully the Authority's case, i.e. the employee's alleged or suspected misconduct or unsatisfactory performance or other circumstance leading to the possibility of action being taken against him/her. All the relevant facts will be put to the employee, with specific examples or relevant incidents being given where possible.

- f) Where evidence has been obtained from third parties in the form of written statements, either the statements themselves or a summary of their content will be given to the employee. The Authority reserves the right, to conceal the identity of the parties who provided the evidence if necessary.
- g) Any witnesses called by the Authority will be asked to state their evidence.
- h) The employee or their representative will be allowed a full opportunity to question the Investigating Officer on the Authority's case and to question any witnesses and to raise points about any information provided by the witnesses.
- i) The employee or their representative will be allowed a full and fair opportunity to state their side of events, explain their conduct and state any mitigating factors. In all cases, the Authority has the right to address questions directly to the employee. The representative must not answer on their behalf.
- j) Any witnesses called by the employee will be asked to state their evidence.
- k) The Investigating Officer will have the opportunity to question the employee on their evidence and raise points about any information provided by witnesses.
- l) The hearing can be adjourned for the purpose of gathering further information, however this must not cause unreasonable delay. Either party must indicate the period of the adjournment. If further information is gathered, both parties must be allowed a reasonable time to consider the new information prior to the reconvening of the disciplinary proceedings. For advice on specific circumstances, see below.
 - i) If the employee claims a defence or makes allegations, which requires further investigation, the hearing should be adjourned, and an investigation undertaken.
 - ii) If new allegations are made, which are deemed to be irrelevant, they should be ignored but referred to when the decision is announced.
 - iii) If new allegations are made, which could affect the whole nature of the case, abandon the hearing and start the investigation process afresh.
 - iv) If a grievance is raised, this should be dealt with as a separate issue under the appropriate policy. The disciplinary procedure will proceed unless there are grounds for suspending it.
- m) The Nominated Officer will sum up the key points of the hearing and inform the employee when a decision will be made and will then close the meeting. The Nominated Officer will take into account any mitigating factors put forward by the employee when making a decision about whether a penalty is appropriate. The Nominated Officer will then come to a decision as to whether a sanction is needed and if so at what level. The Nominated Officer must make their own decision on this point. HR support will be provided, and information provided on previous cases to ensure a consistent approach.

Before coming to any decision, the Nominated Officer should also ask him/herself the following:

- Has a reasonable investigation been completed?

- Is there a genuine belief that the employee did what has been alleged and are there reasonable grounds on which to sustain that belief?
- Is the matter complained of sufficient serious to justify the action being contemplated?
- Is the decision within the band of reasonable responses to a reasonable employer? To answer this question, the following will need to be considered:
 - The nature of the complaint;
 - The nature of the employee's work;
 - The employee's level of responsibility and seniority;
 - The employee's length of service;
 - The employee's previous capability/disciplinary record;
 - Any mitigating factors including health;
 - The action taken in previous similar cases;
 - The sanctions available under this procedure.
- n) The employee will be informed orally of the decision in all cases. The reasons for the decision will be given and the employee left in no doubt as to what action is being taken. The period of time that any warning will remain live will also be explained. The employee will be told clearly what improvement is required, over what period and if appropriate, how it will be assessed. The Nominated Officer will inform the employee that he/she will have the right to appeal.
- o) The decision will be followed up in writing, which will state:
 - the warning given, if any;
 - specifically what the warning is for;
 - how long it will remain live;
 - the expected conduct in the future;
 - what may happen if poor conduct continues;
 - the right to appeal.

For template letters, see the ACAS guide to Disciplinary and Grievances.

SANCTIONS

If the Nominated Officer decides that a sanction is appropriate, the following action may be taken:

- i) Where a disciplinary offence has been committed or there is a capability issue, the employee may receive a first written warning. The warning will be in writing and:
 - Set out the nature of the offence committed or the unsatisfactory performance;
 - Identify the change in behaviour required giving a timeframe;

- Inform the employee that further misconduct or poor performance is liable to result in further action under this procedure;
- Specify the period for which the warning will remain live, whether after such a period the Authority will review the warning, or the warning will automatically lapse;
- Inform the employee that a final warning may be considered if there is no sustained satisfactory improvement or change;
- State that the employee may appeal against the warning;
- Confirm that a record of the warning will be kept on file as a statement of fact but will be disregarded for capability/disciplinary purposes after the specified period

A written warning will normally remain live for 12 months, however the Authority has discretion to extend this period. Warnings commence from the date of the hearing.

ii) Where a serious disciplinary offence or serious poor performance happens or where an employee commits further disciplinary offence or poor performance after a first written warning has been issued and remains live, a final written warning may be given. Such a warning will be in writing and will:

- Set out the nature of the offence committed or the unsatisfactory performance;
- Specify the actions/improvements required, giving a written action plan when appropriate and details of how outcomes will be monitored;
- Clarify that failure to improve/comply may lead to dismissal – or some other action short of dismissal;
- Specify the period for which the warning will remain live, whether after such a period the Authority will review the warning or if the warning will automatically lapse;
- Confirm that a record of the warning will be kept on file as a statement of fact but will be disregarded for capability/disciplinary purposes after a specified period subject to achieving and sustaining satisfactory conduct or performance;
- State that the employee may appeal against the warning.

A final written warning will normally remain live for 2 years, however the Authority has discretion to extend this period. If the employee commits further acts of misconduct/capability while the final written warning remains live, the employee may be dismissed with notice or with pay in lieu of notice.

iii) Where the Authority establishes that an employee has committed an act of gross misconduct, the employee may be summarily dismissed.

iv) Demotion is also a possibility where a final written warning is issued. This would usually be in a capability, rather than disciplinary case.

DISMISSAL

If a decision is taken to dismiss, this will be on full notice. The letter will state the reasons for the dismissal, the date on which the employment will terminate, right of appeal against the dismissal.

The termination of the contract will therefore date from the end of the contractual notice period. The outcome letter will state if the employee chooses to appeal, they will remain on notice of dismissal whilst an appeal takes place. The appeal will be heard by the Standards and Appeals Committee. See Hearings and Appeals procedure for details. If the appeal occurs after the date of the termination of the contract, the employment will end. If the appeal is upheld, the employee will be reinstated, and all pay, and benefits backdated to the date the employment ended. Continuous service will be preserved.

If a hearing finds evidence of gross misconduct, the Authority reserves the right to summarily dismiss employees, without notice.

APPEAL

The Chief Executive will appoint a different Nominated Officer for the appeal (unless the appeal is against dismissal – see above). This person must be the same level or at a senior level to the original Nominated Officer. To instigate an appeal, an employee will submit a written request to the Chief Executive within 5 working days of the decision of the capability or disciplinary panel, providing details on the grounds for the appeal. The new Nominated Officer will hold a formal hearing with the employee, paying particular attention to any new evidence that has been introduced and ensure the employee has the chance to comment on it. Decisions made as a result of an appeal hearing are final and binding.

For detailed information on appeals, please refer to the Hearings and Appeals procedure.

INVOLVEMENT OF MEMBERS IN INDIVIDUAL CASES

Members should ensure that they do not become directly involved unless the matter is brought formally to their attention. This does not prevent the Nominated Officer consulting with appropriate Members informally on a particular case, but the Member must thereafter take no formal part in the procedure and must not express opinions on any misconduct or sanctions. Care and common sense needs to be exercised by all the parties involved to avoid the integrity and impartiality of the process being called into question.

GROSS MISCONDUCT EXAMPLES

Gross misconduct is behaviour of such a nature of Authority is unable to tolerate the continued employment of the individual. Some examples (but not an exhaustive list) are assault, fighting, deceit, drunkenness or being under the influence of illegal drugs at work, serious breach of the Authority's rules including health and safety rules or rules on computer use, gross negligence, conviction of a criminal offence relevant to employment, conduct which brings the Authority's name into serious disrepute, unlawful discrimination, a serious breach of confidence, improper use of an official position for private gain, transmitting confidential information, malicious raising of a grievance or deliberately making false allegations, serious insubordination, falsification of records, deliberate damage to the Authority's property, fraud, harassment and theft.

It should be noted that serious misconduct outside the workplace, where there is a direct bearing upon the Authority's operation or reputation, could also render the employee liable to disciplinary action. The decision as to whether disciplinary proceedings would be appropriate would be taken by the Chief Executive or Director of Finance and Resources.

GROSS INCAPABILITY EXAMPLES

For the purpose of this procedure, gross incapability is performance of such a standard that the Authority is unable to tolerate the continued employment of the individual. Some examples (but not an exhaustive list) of gross incapability are where the employee's act or omission jeopardises the safety of clients or causes substantial financial loss to the Authority or significant damage to the Authority's responsibility. Advice must be taken from HR and Occupational Health where health is a contributory factor.

CRIMINAL OFFENCES

In cases involving an alleged criminal offence, where it appears to management that sufficient evidence already exists to warrant it, a disciplinary hearing should be held prior to the outcome of court proceedings.

Where, exceptionally, an employee has been suspended pending the outcome of court proceedings, the subsequent conviction of that employee may indicate that gross misconduct has occurred and in such cases the matter shall be dealt with accordingly.

An alleged or proven criminal act by an employee occurring outside work shall not be treated as an automatic reason for dismissal. In determining what action, if any, should be taken, consideration should be given to the seriousness of the offence and whether the offence is one that makes the individual unsuitable for the work he or she undertakes or unacceptable to other employees.

Where disciplinary action is considered necessary the advice of the Chief Executive or Director of Finance and Resources should be sought concerning the timing of any proposed disciplinary hearing.

Where an employee is placed on remand, or subject to a custodial sentence, the advice of the Chief Executive or Director of Finance and Resources should also be sought.

Criminal offences outside employment should not be treated as automatic reasons for disciplinary action. If the offence affects the individual's suitability for their post, it may be necessary to consider suspension or to grant unpaid leave.

Summary of those authorised to take actions under the Capability/Disciplinary procedure

Decision	Who is authorised?
Commence an investigation	Chief Executive or Director of Finance and Resources
Suspension	Chief Executive or Director of Finance and Resources
Appoint Investigating Officer	Chief Executive or Director of Finance and Resources
Appoint Nominated Officer.	Chief Executive or Director of Finance and Resources
Conduct an investigation	Fully trained Investigating Officer
Decision to conduct a hearing	Fully trained Nominated Officer
Conduct a hearing	Fully trained Nominated Officer
Decision to ask others to attend the hearing on behalf of the organisation	Chief Executive or Director of Finance and Resources
Decision to dismiss	Fully trained Nominated Officer at Head of Department level
Conduct an appeal hearing (except an appeal against dismissal)	Fully trained Nominated Officer at same level or senior to original Nominated Officer
Consider disciplinary action for misconduct outside the workplace	Chief Executive or Director of Finance and Resources
Timing of disciplinary hearing where there are ongoing criminal proceedings	Chief Executive or Director of Finance and Resources
Conduct an appeal hearing against dismissal	Standards and Appeals Committee

Summary flow chart (following allegation)

Manager consults Chief Executive or Director of Finance and Resources. Informal or formal approach decided.

