

DISCIPLINARY POLICY

Date policy first introduced: 01/04/11

Date of last review: 01/06/21

1. Purpose and scope

This procedure is designed to help and encourage all employees to achieve and maintain appropriate standards of conduct, attendance and job performance. The standards of behaviour expected of employees when working for the Ethical Standards Commissioner (ESC) are set out in policies and the following in particular:

- Code of Conduct
- Hours of Work and Leave Policy
- Absence Policy
- Anti-fraud Policy
- Equality, Diversity and Inclusion Policy
- Performance Management Framework

This policy applies to all employees regardless of working pattern or nature of employment contract. It will not apply to others carrying out work on behalf of ESC (agency staff, contractors etc) who will be governed by the contract under which they have been employed or contracted.

2. Implementation, monitoring and review of the policy

Overall responsibility for policy implementation, monitoring and review lies with ESC. Everyone covered by the scope of the policy is obliged to adhere to, and facilitate implementation of the policy. Appropriate action will be taken to inform all new and existing employees and others covered by the scope of the existence of the policy and their role in adhering to it. The policy will be reviewed at such times as legislation or a change to the ESC policy position requires it. The policy will be made available to the general public.

3. Principles

When managing matters outlined in this policy, the procedures set out in the [ACAS Code of Practice on disciplinary and grievance procedures](#) and the [ACAS Guide to discipline and grievances at work](#) will be followed.

Informal action will be considered, where appropriate, to resolve problems.

No disciplinary action will be taken against an employee until the case has been fully investigated.

For formal action, the employee will be advised of the nature of the complaint against them and will be given the opportunity to state their case before any decision is made at a disciplinary meeting.

Employees will be provided, where appropriate, with written copies of evidence and relevant witness statements in advance of a disciplinary meeting.

At all stages of the procedure the employee will have the right to be accompanied by a trade union representative, work colleague or friend.

No employee will be dismissed for a first breach of discipline except in the case of gross misconduct, when the sanction will be summary dismissal without notice or payment in lieu of notice.

An employee will have the right to appeal against any disciplinary action.

The procedure may be implemented at any stage if the employee's alleged misconduct warrants this.

4. Conduct and performance

This policy covers standards of conduct and performance.

Conduct issues arise when an employee knows what needs to be done, has the skill and ability to do it and the capacity to do it (i.e. it is not related to unreasonable demands and/or workload on the part of the ESC), but does not do it because they don't want to (can do, but won't).

Performance issues arise when an employee knows what is required to be done and wants to do it but lacks the skill or ability to do it (wants to but can't).

5. The Procedure

Informal resolution

Many cases of misconduct or poor performance are best dealt with by informal advice, support, coaching and counselling rather than through formal procedures. Employees and managers are encouraged to discuss problems in order to identify issues and agree methods to improve conduct or performance. When dealing with issues informally, the line manager will still ensure that employees understand what needs to be done, over what time period and what action will be taken if there is no improvement. The actions and standards required may be confirmed in writing.

Informal processes will not be used for serious incidents or persistent performance issues.

Investigation

Before any first stage of the formal procedure is held, the matter will be investigated. This may involve gathering written information only, or may involve investigation meetings to gather information. Any meetings and discussions as part of an investigation are solely for the purpose of fact-finding and no formal action will be taken without a disciplinary hearing.

Formal Stage meetings

In any of the formal stages of the procedure, no decision will be made until a meeting has been convened with the employee and they have had the opportunity to state their case. Employees will be provided, where appropriate, with written copies of evidence and

relevant witness statements in advance of any such formal meeting and may be accompanied by a trade union representative, work colleague or friend.

First stage of formal procedure

This will normally be either:

- **an improvement note for unsatisfactory performance** if performance does not meet acceptable standards. This will set out the performance problem, the improvement that is required, the timescale, any help that may be given and the right of appeal. The individual will be advised that it constitutes the first stage of the formal procedure. A record of the improvement note will be kept for six months, but will then be considered spent – subject to achieving and sustaining satisfactory performance

OR

- **a first warning for misconduct** if conduct does not meet acceptable standards. This will be in writing and set out the nature of the misconduct and the change in behaviour required and the right of appeal. The warning will also inform the employee that a final written warning may be considered if there is no sustained satisfactory improvement or change. A record of the warning will be kept, but it will be disregarded for disciplinary purposes after a specified period (eg, six months – the length of time will be dependent on the impact a likely repeat of the misconduct would have on ESC).

Final written warning

If the offence is sufficiently serious, or if there is further misconduct or a failure to improve performance during the currency of a prior warning, a final written warning may be given to the employee. This will give details of the complaint, the improvement required and the timescale. It will also warn that failure to improve may lead to dismissal (or some other action short of dismissal) and will refer to the right of appeal. A copy of this written warning will be kept but will be disregarded for disciplinary purposes after 12 months subject to achieving and sustaining satisfactory conduct or performance.

Dismissal or other sanction

If there is still further misconduct or failure to improve performance the final step in the procedure may be dismissal or some other action short of dismissal such as demotion or disciplinary suspension. In the case of dismissal, the employee will be provided in writing with reasons for dismissal, the date on which the employment will terminate, and the right of appeal.

If some sanction short of dismissal is imposed, the employee will receive details of the complaint, will be warned that dismissal could result if there is no satisfactory improvement, and will be advised of the right of appeal. A copy of the written warning will be kept but will be disregarded for disciplinary purposes after 12 months subject to achievement and sustenance of satisfactory conduct or performance.

Gross misconduct

The following list provides some examples of offences which are normally regarded as gross misconduct:

- theft or fraud
- physical violence or bullying
- deliberate and serious damage to property

- serious misuse of ESC property or name
- deliberately accessing internet sites containing pornographic, offensive or obscene material
- serious insubordination
- unlawful discrimination or harassment
- bringing the organisation into serious disrepute
- serious incapability at work brought on by alcohol or illegal drugs
- causing loss, damage or injury through serious negligence
- a serious breach of health and safety rules
- a serious breach of confidence
- failure to disclose a conflict of interest.

If an employee is accused of an act of gross misconduct, they may be suspended from work on full pay, normally for no more than five working days, while the alleged offence is investigated. If, on completion of the investigation and the full disciplinary procedure, the organisation is satisfied that gross misconduct has occurred, the result will normally be summary dismissal without notice or payment in lieu of notice.

Appeals

An employee who wishes to appeal against a disciplinary decision must do so within five working days. The Commissioner will hear all appeals and this decision is final. At the appeal any disciplinary sanction imposed will be reviewed.

Records

Records will be kept at each stage of the formal disciplinary procedure. All parties involved will have the opportunity to check their accuracy and employees will be entitled to a copy of all records relevant to them. ESC reserves the right to withhold some information from employees where it is necessary to do so to protect the identity of a witness.

All records will be treated as confidential and will be kept for no longer than necessary and in accordance with the data protection legislation.

6. Behaviour outside the Commissioner's office

An employee's behaviour outside work will be of concern if it is clear that, as a result of their behaviour, their ability to do their job effectively, or to maintain good working relationships, has been seriously impaired, or the office has been brought into disrepute. Examples of behaviour which may raise these concerns include:

- violence and fraud
- harassment of fellow employees
- acts which could lead to imprisonment
- acts which may be seen to have seriously damaged the interests or reputation of ESC.

All such cases will be handled through the normal disciplinary procedures and may result in dismissal if the employee is no longer capable of carrying out their job effectively, or of maintaining satisfactory working relationships with colleagues or people and bodies with whom ESC has formal dealings.

Equality Impact Assessment

Does this policy comply with the general Public Sector Equality Duty (s149 Equality Act 2010)?
This policy applies to all employees. Its impact was considered when drafting. We consulted with all employees prior to publication to identify and address any issues.

Data Protection Impact Assessment

Have we considered any effect the policy may have on the collecting, processing and storing of personal data?

The records generated by this policy will contain personal data and may contain sensitive and special category personal data. Suitable retention and destruction policies are in place to manage this material.

Information Security Impact Assessment

Have we considered the impact any policy may have on our cyber-resilience?

This policy should have no impact on our cyber-resilience.

Records Management Impact

Have we considered the impact any policy may have on our ability to manage our records?

This policy should have no impact on our ability to manage our records.

Version	Description	Date	Author
1.0	First draft	01/06/21	Public Appointments Officer