The Office of the Police and Crime Commissioner (OPCC) is committed to taking robust action against unacceptable behaviour and conduct which is wilful or negligent. The Managing Misconduct Policy defines the OPCC’s approach to the management of such behaviour which falls below the standards required or is in breach of policies or rules.

All employees of the OPCC.

This document is not part of the formal policy. Instead it provides additional information to help you as a manager in the practical day to day application of the policy.

It is expected that you will have an understanding of the Managing Misconduct Policy prior to using this guide.
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Roles and responsibilities

As the manager you are responsible for:

- providing informal feedback, instruction and practical support
- identifying and responding where concerns are raised
- applying the Managing Misconduct Policy accurately
- tracking and progressing cases through case management
- informing HR Operations of formal management action or of any safeguarding concerns
- liaising with the investigating officer to assess next steps
- ensuring regular contact with employees who are suspended
- maintaining confidentiality
- arranging meetings as necessary
- suspension of IT accounts and security passes as appropriate
- keeping records, drafting and issuing letters / documentation with HR support as necessary

The employee who is the subject of the misconduct concern is responsible for:

- achieving required standards of behaviour
- conducting themselves in an acceptable manner and complying with the policy
- improving their conduct following an informal discussion or formal warning
- complying with employee obligations/deadlines
- arranging their own trade union representative or companion if desired and advising management of this

The HR person who is supporting the manager is responsible for:

- advising on policy application and best practice
- supporting with case management
- advising on the completion of letters, reports and documentation
- attending meetings in an advisory capacity
- HR does not perform a decision making role

The trade union representative or a Hampshire County Council work colleague is responsible for:

- supporting their member/colleague
- attending arranged meetings or ensuring meetings are
Safeguarding

How to distinguish misconduct from unacceptable performance

Misconduct is generally seen as wilful action. To help decide whether an action is wilful you may want to consider the following:

- does the employee hold the necessary skills? This can be evidenced by their participation in relevant training or on the job development through which they have developed these skills
- does the employee have the necessary knowledge? This can be evidenced by the employee’s previous demonstration of the correct or expected actions

If the above are evidenced then it is more likely that the employee has wilfully chosen to behave in a manner which contradicts their own skills and knowledge and is therefore a misconduct issue.

If however a lack of training or knowledge is identified in relation to an issue, then it is more likely to be a performance concern.

Policy stages

The initial stage is an informal preliminary enquiry.

There is one further stage when managed informally:
- informal discussion

There are three further possible stages when managed formally:
- investigation
- formal meeting
- appeal meeting

There are some differences in the way a disciplinary matter involving an employee with less than two years’ service is managed.
Preliminary enquiry
You must carry out a brief preliminary enquiry to establish the basic facts. This enables you to decide how you will manage the misconduct concern going forward.

How to respond when a misconduct concern is raised

If the misconduct concern is of a safeguarding nature, you must contact the relevant safeguarding lead immediately and HR Operations.

You must give the preliminary enquiry priority so that you can complete it within the same working day / shift as the concern being raised.

A preliminary enquiry is separate to a formal investigation. The preliminary enquiry may involve taking accounts of the situation or event from those involved and gathering essential written records.

As this is informal information gathering, the employee has no statutory right to be accompanied. However a reasonable request to be accompanied may be considered where it does not cause a delay in progressing the case.

Where you require further time in order to carry out the preliminary enquiry to establish whether concerns may amount to gross misconduct, you can instruct the employee to stay away from work. You must obtain authorisation from a senior manager before taking action and notify HR Operations. An instruction to stay away from work is a temporary arrangement whilst you complete the preliminary enquiry. You must complete the preliminary enquiry and meet with the employee to confirm the decision regarding suspension as quickly as possible and within 5 calendar days of the instruction to stay away from work. If time allows, you may wish to write to or email the employee to invite them to this meeting however a telephone call is sufficient.

Possible outcomes of the preliminary enquiry

- no apparent substance to the concern
  - safeguarding concerns which do not require further action because they are found to be malicious must be recorded
- the matter warrants an informal discussion with the employee
- the matter warrants a formal investigation into possible misconduct or gross misconduct
Suspension or alternative arrangements

Where your preliminary enquiry establishes that the concerns may amount to gross misconduct, you must consider whether suspension, or alternatives to suspension, is necessary.

Alternative arrangements to suspension can include temporary placement into another role or amended duties in their current role. This will only be appropriate where the new duties or role are not linked in any way to the alleged misconduct.

Where you require further time to make a decision about suspension, see preliminary enquiry section.

You must discuss any potential suspension, or alternatives, with HR Operations and receive authorisation from your senior manager.

Once you have decided suspension, or an alternative to suspension, is necessary you must meet with the employee immediately to inform them that they are being suspended or of the decision to implement alternative arrangements. The employee has no statutory right to be accompanied. However this will normally be accommodated where it does not cause any unnecessary delay. This meeting should be handled sensitively and acknowledge this is likely to be a difficult time for the employee.

You must send the employee a letter to confirm the decision regarding suspension, ideally on the same day as the meeting but if not within 4 calendar days.

You should continually review the decision regarding suspension or alternative arrangements throughout the investigation process to check that the grounds for suspension or alternative arrangements are still supported. Conversely new evidence may mean the case is more serious than first thought and suspension or alternative arrangements are now appropriate.
Informal Management

Use this section when, having completed the preliminary enquiry, you consider the misconduct to be minor and it has only happened on one or two occasions.

Effective management of informal cases

Informal management of misconduct is an opportunity for you to support the employee to improve their conduct and prevent further instances of misconduct. You can achieve this by providing clear instructions and guidance on what is expected in the future. There may also be a need to consider training or other support mechanisms.

Informal discussion

You must meet with the employee on a one-to-one basis as soon as possible to hold an informal discussion.

You may have already spoken with the employee during your preliminary enquiry however you must meet with them again to confirm your decision to manage the misconduct informally. For the avoidance of doubt, you must make it clear to the employee that the meeting is being held under the informal management section of the Managing Misconduct Policy and is not a normal day to day discussion.

At the discussion you must explore the event or concern and seek their response.

The employee has no statutory right to be accompanied at the discussion.

Possible outcomes of an informal discussion

In all situations you should:

- provide an explanation of why the conduct was unacceptable
- provide guidance on the behaviour required in the future
- offer support or training to help achieve the expected behaviours

You must decide whether:

- the employee should be made aware that failure to improve in the future may result in formal disciplinary action or
- you accept the employee’s explanation and no further action is required

In exceptional cases, something new may be raised during the discussion which means the concern is more serious than first thought. Alternatively, it may become clear that the matter
can not be resolved informally. If so, adjourn the meeting and tell the employee the matter can not be managed informally and instead requires formal investigation.

Use the ‘Record of Informal Discussion Form’ to keep a summary of the discussion. Share the record with the employee and keep a copy on the personnel file or ePF.

**Formal Management**
Use this section when, having completed the preliminary enquiry, you consider the misconduct to be serious, potential gross misconduct or there are repeat occurrences of minor misconduct following an informal discussion.

**Effective management of formal cases**
When a misconduct concern progresses to the formal stages, it is important that you ensure the case is progressed in a timely manner, ideally within a maximum of **26 calendar days**. You are responsible for liaising with the investigating officer regarding their progress and having an oversight of the case at all times. At certain points during the process you must assess the current situation and decide on the next steps.

**Right to be accompanied**
The employee has the statutory right to be accompanied at a formal meeting and an appeal meeting by an OPCC work colleague or a trade union representative.

There is no such statutory right to be accompanied at an investigation meeting however you should normally accommodate an employee’s request to be accompanied where it does not cause any unnecessary delay in scheduling the investigation meeting.

It is the employee’s responsibility to arrange their own companion and advise management of this.

**Alternative date**
An alternative date is automatically scheduled for within **9 calendars days** of the first. All reasonable efforts should be made by the employee and their companion to attend the first scheduled date but where this is not possible due to availability, the alternative date will be used.

If the employee is unable to attend or fails to attend the re-arranged meeting, this will normally go ahead in the employee’s absence.
**Investigation**

Where you consider the misconduct requires formal management, you must contact HR Operations if you haven’t already done so.

An investigating officer is nominated to carry out an impartial investigation and write a report of their findings. The investigating officer in cases of minor misconduct could be the line manager and in cases of more serious misconduct someone else. The requirement for and the level of investigation will be proportionate to the nature, complexity and seriousness of the misconduct concerns.

You must write to the employee to inform them of the allegation/s and the investigation.

The investigating officer is responsible for:

- completing the investigation, including a record of their findings, as quickly as possible and within a maximum of **26 calendar days** (unless there are exceptional circumstances such as a Police investigation or extenuating personal circumstances when an alternative timescale may need to be agreed, where this is the case the reasons should be documented and all parties updated immediately)
- identifying any potential delays and discussing and agreeing alternative timescales with the manager
- identifying key tasks within the investigation process
- planning a timetable for the completion of key tasks
- progressing the investigation according to the timetable
- keeping the employee informed of their progress
- writing a report of their findings
- regularly updating the manager so they can review the allegation/s and any suspension decision

The investigation process involves:

- gathering evidence to establish the facts relevant to the allegations
- interviewing the employee at least once during the process
- interviewing the employee a further time where the allegations change
- interviewing any witnesses or others relevant to the misconduct
Outcome of investigation

The investigating officer will record their findings. This will include an analysis of the evidence and their recommendations on appropriate next steps. A template is available.

Based on the evidence and recommendations included in the record, you will decide what further action to take. You should inform the employee of your decision.

The possible next steps are:

- no case to answer and therefore no further action is required
  - safeguarding concerns which do not require further action because they are found to be malicious must be recorded
- the matter warrants an informal discussion with the employee
- no formal disciplinary action, but some other action such as training or engagement of another procedure
- there is a case to answer which should be referred to the next stage, a formal meeting

Where the investigating officer recommends there is a case to answer, they do not recommend the level of sanction, as this is decided by the panel at a formal meeting. They may however recommend at which level the meeting panel should be.

How to invite an employee to a formal stage meeting

You must write to the employee to invite them to a formal meeting. The letter must give up to 9 calendar days notice of the meeting to enable them to prepare and submit any relevant mitigating information.

Use the template letter to ensure you include all the necessary information.

Who chairs the formal meeting

<table>
<thead>
<tr>
<th>Possible outcome</th>
<th>Chair of the meeting</th>
<th>Adviser to the panel</th>
</tr>
</thead>
<tbody>
<tr>
<td>First or final warning</td>
<td>An appropriate manager</td>
<td>HR adviser</td>
</tr>
<tr>
<td>Dismissal</td>
<td>Two senior managers</td>
<td>HR adviser</td>
</tr>
</tbody>
</table>

Prior to the formal meeting, you will have a view as to the seriousness of the misconduct and therefore the possible outcomes. The panel will be set up according to the possible
outcome. For a minor concern which is anticipated to result in a first warning, the appropriate manager can be you (as the employees line manager).

Other meeting attendees may include:

- the employee and their representative
- the manager and/or management representative – with support as appropriate
- witnesses (including the investigating officer)

**What information should be shared**

You and the employee are expected to provide details of any significant issues and relevant papers in advance of the meeting. The investigation record is normally supplied with the invitation letter.

You must provide the employee with two copies of the investigation record, one for them and one for their companion.

At this stage the employee is given the opportunity to collect their own evidence through HR Operations or the investigating officer and submit this to the panel.

The employee, or their companion, must submit their information to arrive at least 4 calendar days before a meeting.

**How to run a formal meeting**

The chair of the panel will:

- invite management, or a management representative, to present their case and call witnesses who can be questioned by the employee, or their companion
- invite the employee, or their companion, to present their case and call witnesses who can be questioned by management
- allow both to ask their own witnesses follow up questions
- ask questions and allow the other panel members to do so
- invite both to summarise their case - management will usually summarise first (new evidence should not be introduced at this point)
- adjourn the meeting to consider the evidence and decide on the outcome
- reconvene the meeting to notify the employee of the outcome
Possible outcomes – first or final warning

The chair of the meeting will decide whether:
- an allegation is unfounded / unproven meaning there is no case to answer (but there may be an informal discussion)
- an allegation is unsubstantiated
- an allegation is upheld / proven and therefore whether to issue
  - a first written warning – up to 12 months
  - a final written warning – between 12-24 months

The length of the warning depends on the nature and seriousness of the misconduct and whether there is a belief that misconduct may reoccur.

The chair of the meeting will also discuss the following:
- the reasons for the decision
- requirements regarding the employee’s future behaviour and conduct
- details of any support to be provided
- the likely consequences of any further misconduct
- that a copy of the letter detailing the written warning will be placed on the employee’s personnel file or ePF
- the right of appeal

Following the issuing of a warning you should continue to review the employee’s standard of behaviour and conduct. Where the employee achieves the required standard, at the end of the warning period, you must confirm this in writing and save a copy to the personnel file or ePF. Should there be further misconduct concerns whilst a warning is still live, following an investigation, the panel will take the previous warning into account and it may lead to a more severe sanction.

Possible outcome – dismissal

The chair of the meeting will decide whether:
- the allegation is unfounded / unproven meaning there is no case to answer (but there may be an informal discussion) or
- the allegation is unsubstantiated or
- the allegation is upheld / proven and therefore whether to
  - dismiss with contractual notice
  - summary dismissal

Dismissal with notice applies in cases where an employee’s conduct remains unacceptable following a final written
warning. Summary dismissal applies when gross misconduct has been substantiated, and summary dismissal is deemed to be an appropriate sanction.

The chair of the meeting will also discuss the following:
- the reasons for the decision
- the right of appeal
- any duty to refer the employee to the Disclosure and Barring Service and / or a professional body

The line manager must cancel the employee’s IT accounts and security pass immediately.

### Referrals to Disclosure and Barring Service and Professional Bodies

There may be a duty to refer an employee to the Disclosure and Barring Service and/or a professional body. If the duty is met you are responsible for initiating and completing a referral in conjunction with HR Operations.

### How to confirm the decision

The chair of the meeting must send a letter to the employee to confirm the outcome. A template letter can be used to ensure all the necessary information is included.

The letter will be sent ideally on the same day as the meeting but if not within 4 calendar days, and a copy placed on the personnel file or ePF.

### Right of appeal

The employee has a right to appeal against any formal disciplinary sanction. An employee must ensure their written appeal is received by their manager within 10 calendar days of the meeting, starting from the day after the meeting. If the grounds for the appeal are unclear, you should ask the employee to clarify the specific reasons and their evidence.

An appeal against a first warning is heard by a Senior Manager. An appeal against a final warning is heard by two Senior Managers.

An appeal against dismissal is heard by a Senior Manager and the Chief Executive.

### How to invite an employee to an appeal meeting against first or final warning

You must write to the employee to invite them to a formal appeal meeting. The letter must give up to 9 calendar days notice of the meeting.

Use the template letter to ensure you include all the necessary information.
The employee has the right to be accompanied.

An alternative date will be arranged if requested.

<table>
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<th>Appeal</th>
<th>Panel</th>
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<tbody>
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<td>Appeal against a first written warning</td>
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<td>HR adviser</td>
</tr>
<tr>
<td>Appeal against a final written warning</td>
<td>Two senior managers</td>
<td>HR adviser</td>
</tr>
<tr>
<td>Appeal against dismissal</td>
<td>One senior manager and the</td>
<td>Legal adviser Expert adviser - as appropriate</td>
</tr>
<tr>
<td></td>
<td>Chief Executive</td>
<td></td>
</tr>
<tr>
<td>Less than two years continuous service -</td>
<td>Two senior managers</td>
<td>HR adviser</td>
</tr>
<tr>
<td>appeal against dismissal</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The panel must not previously have had significant involvement in the case and should be more senior in authority than the manager who made the decision being appealed.

The legal adviser is normally a member of Hampshire Legal Services.

The expert adviser is normally, but is not limited to, a senior manager within the OPCC. Their role is to provide specialist or technical knowledge relevant to the case.

How to run an appeal meeting

An appeal seeks to address the specific issues raised by the employee. A complete re-hearing is only permitted in exceptional circumstances where the employee’s grounds of appeal justify such action.

The conduct of an appeal meeting therefore depends upon the grounds of the appeal but will typically run as follows. The chair of the panel will:

- invite the employee, or companion, to present their appeal and call witnesses who can be questioned by management
- invite management, or a management representative,
to present their response and call witnesses who can be questioned by the employee, or companion

- allow both sides to ask their own witnesses follow up questions
- ask questions in respect of the presentation of the employee’s appeal and/or the management response and allow the other panel members to do so
- invite both to summarise their case - management will usually summarise first (new evidence should not be introduced at this point)
- adjourn the meeting to consider the evidence and decide on the outcome
- reconvene the meeting to notify the employee of the outcome

**Possible outcomes**

- the appeal is not upheld and the previous decision remains
- the appeal is upheld and an alternative outcome is decided

If the employee is reinstated on appeal after a previous dismissal, the employee’s service will be continuous and any loss of pay between dismissal and reinstatement is paid.

**How to confirm the appeal decision**

The chair of the meeting must send a letter to the employee to confirm the outcome. A template letter can be used to ensure all the necessary information is included.

The letter will be sent ideally on the same day as the meeting but if not within **4 calendar days**, and a copy placed on the personnel file or ePF.

**Less than two years service**

The same policy principles, stages and process for managing misconduct are applicable to employees with less than two years continuous service.

There are some areas of difference which are contained in the policy.

These differences allow greater flexibility as the chair of the panel may reasonably decide that misconduct (as opposed to gross misconduct) is sufficient reason to dismiss.
Appendix 1
Misconduct

Definition

Misconduct is defined as wilful or negligent misconduct or omission.

Wilful misconduct can be summarised as lapses of conduct in an employee’s approach to their work or unacceptable behaviour towards others. It can also include unacceptable work performance which is deliberate and not simply a lack of competence.

Negligent misconduct, or misconduct by omission, can be summarised as careless or reckless behaviour or a failure to act which has a significant adverse impact on a service or an individual.

The level of seriousness of each instance of misconduct depends upon the nature of the employee’s role and the work environment.

Examples
(this list is not exhaustive and other forms of misconduct will be managed under the Managing Misconduct Policy)

- failure to comply with the OPCC’s code of conduct, professional codes of conduct, standing orders, departmental work rules and reasonable requirements
- failure to comply with health and safety requirements
- behaving in an improper, disorderly, unacceptable or unprofessional manner
- insubordination or use of inappropriate language
- discrimination
- misuse of the OPCC’s equipment or IT systems – such as revealing passwords to others, loss of data/equipment, excessive or unauthorised use of any IT service for private purposes or wilful damage to property or equipment.
- inappropriate use of social networking
- being under the influence of alcohol, illegal drugs or other substances
- misconduct at work or outside work (criminal or otherwise) which could discredit the OPCC’s reputation
- persistent late attendance or inadequate timekeeping
- abuse of flexible working systems or home-working arrangements
- unauthorised absence and failure to record absence
- failure to report or record any material which is required to be reported or kept, improper disclosure of information
- significant breaches of data security policies or data protection standards
- failure to comply with the OPCC’s policies and procedures
Appendix 2 –

Gross Misconduct

Definition
Gross misconduct is an act of misconduct or indiscipline which is so serious in nature that it fundamentally damages the employment relationship and justifies dismissal without notice. Each case has to be considered in the light of all of its circumstances, including the nature of the job and the details of the gross misconduct.

Examples
(this list is not exhaustive and other forms of gross misconduct will be managed under the Managing Misconduct Policy)

- theft, misappropriation, fraud, corruption
- deliberate falsification of records including any financial claims
- fighting, assault on another person, physical violence, threatening behaviour
- sexual misconduct
- failure to self disclose a criminal offence
- unlawful discrimination, harassment or bullying
- serious incapability through alcohol or being under influence of illegal drugs or other substances
- serious negligence that causes unacceptable loss, damage or injury
- serious act of insubordination
- inappropriate use of information technology, which may include accessing internet sites containing pornographic, obscene or offensive material
- inappropriate use of social networking
- serious breach of specific departmental rules
- serious misconduct at work or outside work (criminal or otherwise) which could discredit the OPCC’s reputation
- misuse of OPCC property and assets - wilful or careless loss, damage to or misuse of equipment, property, assets, facilities, financial irregularities
- information - making false, misleading, malicious or inaccurate verbal or written statements; unauthorised alteration or destruction of records or documents
- serious professional misconduct
- inappropriate use or disclosure of confidential commercially sensitive information
- serious breach of data security policies or data protection standards
- failure to comply with the OPCC’s policies and procedures

Support Managers:
Any queries can be directed to HR Operations on 01962 813915 or hradvice@hants.gov.uk.

A confidential Employee Support service is available on freephone 0800 030 5182 (or 0161 836 9498 if calling from a mobile) at any time. Further information is available at http://www3.hants.gov.uk/employee-support

### How to guide

**Governance**

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| Date of publication: | V1 – November 2014  
V1.1 – April 2016 |
| Planned review date: | 2 years or sooner if required |
| Owner:               | HR Operations |